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June 10, 2003

D.C. BOARD OF ZONING
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By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: BZA Application No. 16970
National Child Research Center
3209 Highland Place, NW; Square 2072, Lot 30

Dear Chairman Griffis and Members of the Board:

This letter and the attached documents are submitted on behalf of the National Child Research Center ("NCRC"), the Applicant in the above referenced case in response to the information requested by the Board during the May 6, 2003 public hearing. Enclosed please find the following documents.

- NCRC legal brief on the three issues that the Board is taking up as a preliminary matter: (1) whether area or use variance relief is needed from 11 DCMR § 3202.3; (2) what parking relief, if any, is required; and (3) whether the main building has more than three stories.
- Square footage summaries of the buildings located on the NCRC property, including a breakdown of existing and proposed classroom, administrative and service/support space.
- The occupancy of the room to be used for meetings, which includes a comparison of the existing "meeting room" (the library) with the proposed "meeting room" (the motor play space).
- Pictures from the rear of the adjacent property at 3207 Highland Place that depict the current impact and potential impact of the proposed addition to the main building on the NCRC property.
- Site plans depicting the potential removal of trees on the NCRC property.

BZA
Case No. 16970
Exhibit No. 19

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.19

The Applicant believes that these documents fully address the Board's request for additional information. The Applicant looks forward to completing its presentation at the June 24, 2003 public hearing.

Respectfully submitted,

SHAW PITTMAN, LLP

By Maureen Dwyer
Maureen Dwyer

Paul Tummonds
Paul Tummonds

Enclosures

cc: See attached Certificate of Service

ShawPittman LLP

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2003 a copy of the foregoing Supplemental Statement of the Applicant was sent by first class mail, postage prepaid, to the following parties:

Advisory Neighborhood Commission
(ANC) 3C
c/o Nancy MacWood, Chairperson
3417 Woodley Road, N.W.
Washington, D.C. 20016

The Friends of NCRC
c/o Anne Large
3520 35th Street, N.W.
Washington, D.C. 20016

The Cleveland Park Neighbors
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Maureen E. Dwyer

Document #: 1330304 v.1

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re: APPLICATION OF THE NATIONAL CHILD RESEARCH CENTER

BZA Application No.: 16970

NCRC BRIEF ON ISSUES RAISED BY THE BZA

This brief addresses the three issues that the Board is taking up as a preliminary matter at the June 24, 2003 public hearing. These issues are (I) whether area or use variance relief is needed from 11 DCMR § 3202.3; (II) what parking relief, if any, is required; and (III) whether the main building has more than three stories.

I. NCRC'S REQUEST FOR AREA VARIANCE RELIEF FROM 11 DCMR §3202.3 IS APPROPRIATE.

The Applicant's request for variance relief from 11 DCMR §3202.3 squarely falls within the area variance relief standard. The construction of a new principal structure on the NCRC property does not seek to introduce a use on the property that is prohibited by the Zoning Regulations; rather, it seeks to construct a structure in manner that does not strictly satisfy certain area restrictions of the Zoning Regulations. Therefore, only an area variance is necessary.

A. As discussed in NCRC's Supplemental Statement dated April 22, 2003, the proposed request for variance relief from §3202.3 is properly deemed to be a request for an area variance. The D.C. Court of Appeals clearly articulated the differences between the instances in which use or area variance relief is required in Palmer v. District of Columbia Board of Zoning Adjustment, 287 A. 2d 535 (D.C. 1972). In Palmer, the Court held that:

> an area variance, relating to restrictions such as side yard, rear yard, frontage, setback or minimum lot requirements, does not alter the character of the zoned district, whereas a use variance seeks a use ordinarily prohibited in the particular district. *Id* at 541. (internal citations omitted.)

This interpretation was cited and elaborated on in Association for Preservation of 1700 Block of N Street, N.W., and Vicinity, et al. v. District of Columbia Board of Zoning Adjustment, 384 A. 2d 674 (D.C. 1978). In this case, the D.C. Court of

Appeals affirmed the decision of the Board and determined that relief from the off-street parking requirements of the Zoning Regulations was properly characterized as an area variance case. In addition, the Court noted that:

> The distinction between a use variance and an area variance is that the former "'permits a use other than that prescribed by the zoning ordinance' whereas an 'area variance has no relation to change of use. It is primarily a grant to erect, alter or use a structure for a permitted use in a manner other than that prescribed by the ordinance.' (citing 2 Anderson, American Law of Zoning §14.07 (1968), quoting in part, *Alumni Control Board v. Lincoln*, 179 Neb. 194, 137 N.W. 2d 800, 802 (1965)). *Id.* at 677.

The Court also noted that:

> The principal rationale for the different standards applicable to the two variances is that an area variance does not affect the use of the land and does not threaten the neighborhood or adjacent landowners with the maintenance of an incompatible use of the subject property. 3 Anderson, American Law of Zoning § 14.45, at 3-4 (1968). *Id.* At 677.

The legal standard is clear. A use variance changes the character of the zoned district by permitting an otherwise proscribed use, whereas an area variance concerns only the practical difficulty in using the particular property for a permitted use.

B. The NCRC property is located in the R-1-B District which permits child development center use as a special exception, provided that the requirements of §205 of the Zoning Regulations are satisfied. Thus, a child development center is a permitted use in the R-1-B District. The fact that a child development center is permitted as a special exception use in the R-1-B District is evidence that such use is deemed compatible with the surrounding area.

C. The requirements of § 3202.3 clearly refer to considerations related to the area of a proposed lot and not the use of the land. § 3202.3 of the Zoning Regulations states:

> A building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to a principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record; 11 DCMR § 3202.3.

The requirement to have a record lot on which to locate a new principal structure is tailored to assuring that the principal structure satisfies area requirements such as minimum lot size, minimum lot occupancy requirements and rear and side yard requirements. Therefore, based on the criteria established in Palmer and Ass'n for

Preservation et al., NCRC's request for relief from § 3202.3 of the Zoning Regulations is properly deemed to be a request for area variance relief.

D. Up until 1986, the Zoning Regulations permitted development of more than one principal structure on a single record lot provided the owner placed covenants on the property for light, air, access, etc. It thus was a matter of right use. In 1986, the Zoning Regulations were amended to require special exception approval under Section 2516 to allow more than one principal structure on a single record lot. The argument put forth by the opponents to NCRC that this is a use variance ultimately boils down to the proposition that if you do not proceed under Section 2516, but rather as a variance from Section 3202.3, you need a use variance. Such an argument is absurd and is clearly contrary to established District of Columbia case law.

E. The Delaware case cited by the opponents to NCRC, Jenney v. Durham, 707 A2d 752, is not applicable to the facts in this case. In Jenney, the Board of Adjustment and the court properly applied the use variance standard because the regulation in question clearly stated, "development of single family homes is not permitted by right or by conditional use in the prohibitive steep slope district." Thus, to build the house the owner needed a use variance. That is clearly not the same fact pattern in this case. NCRC does not need a use variance to operate a child development center on the site.

F. The opponents also note BZA Application No. 16693 of Carroll Little in regard to this issue. The BZA's decision in that case is simply a misapplication of the law to a difficult fact situation and it is patently wrong. The applicant was not represented by counsel and there is nothing in the record to indicate that the BZA sought the opinion or advice of its own corporation counsel. The BZA concluded that since the use of a single lot for the construction of an addition to one of two principal structures on the lot is a use prohibited in all zone districts, then a use variance was required. On the contrary, Section 2516 permits more than one principal structure on a lot and additions thereto. Thus, the BZA's reasoning was simply wrong in that case.

G. In a series of cases involving conversion of row dwellings to apartment houses, where the Zoning Regulations require a minimum lot area of 900 square feet per unit, the BZA has consistently applied the area variance standard and the District of Columbia Court of Appeals ("DCCA" or the "Court") has upheld those decisions. As the Court has stated, since no essential change in the use of the property was contemplated, the variance requested fell under the rubric of area rather than use variances, and required only a showing of practical difficulties. Wolf v. BZA, 397 A. 2d 936 (DC 1979.) (See the attached **Tab A**.) The same rationale applies here. NCRC is not requesting to devote its property to a prohibited use or use its land inconsistent with the character of the zone. On the contrary, NCRC's use of its property is a permitted use in the R-1-B District, which can not be expanded without the requested relief. This is a classic

illustration of an area variance. See, also, BZA Application No. 16895-A of Debra Tunney in which the BZA granted a variance from the minimum lot dimensions as an area variance. (See the attached **Tab B**.)

II. NCRC IS NOT REQUIRED TO PROVIDE OFF-STREET PARKING SPACES

Based on the plain language of 11 DCMR §2100.5, the long standing interpretation of this Section of the Zoning Regulations by the Office of the Zoning Administrator, and the previous rulings of the BZA, NCRC is exempted from the requirement to provide off-street parking spaces. In addition, NCRC is not required to provide parking spaces on its property as a result of the parking credit that it receives based on the use of its property prior to 1958. Finally, the proposed tandem parking spaces on the property fully satisfy the requirements of the Zoning Regulations. In the event that NCRC is required to provide parking spaces on the site, NCRC's request for variance relief from such a requirement is properly deemed to be an area variance.

A.. The general rule in the interpretation of statutes, rules and regulations is that they should be construed in such a manner that no part will be inoperative, superfluous, void, or insignificant. Importantly, between general provisions and more specific provisions within the same statute, rule or regulation, the more particular provision must control. The clear and plain language of 11 DCMR §2100.5 states that "No additional parking spaces shall be required for a historic landmark or a building or structure located in a historic district which is certified by the State Historic Preservation Officer as contributing to the character of that historic district."

1. Section 2100 of the Zoning Regulations enumerates the requirements for off-street parking spaces. As noted above, §2100.5 specifically addresses the exemption for providing parking spaces for historic landmarks and buildings in historic districts, §2100.6 and §2100.7 address the general requirements for providing parking spaces when a change in intensity of use of buildings (existing prior to May 12, 1958) occurs. The most particular provision of §2100 relating to the provision of parking spaces for historic landmarks and contributing buildings in historic districts is §2100.5.

   In this case, NCRC has received a certification from the State Historic Preservation Officer that the building(s) on the NCRC property are contributing to the character of the Cleveland Park Historic District. (See **Tab C**.) If the BZA was to determine that §§ 2100.6 and 2100.7 were to require NCRC to provide parking spaces, such a determination would make §2100.5 void or superfluous. Such an interpretation would be clearly contrary to the rules of statutory construction, as well as the purpose and intent of §2100.5 of the Zoning Regulations. Interpreting the effect of §2100.5 in accordance with the well-established rules of statutory construction and the clear and plain language of this Section of the Zoning

Regulations, it is clear that NCRC is not required to provide off-street parking spaces.

2. The Office of the Zoning Administrator has consistently applied the plain language of §2100.5 to all qualifying historic properties without regard to the degree of increase in intensity of use. There is nothing in §2100.5 or any other provision of §2100 et seq. of the Zoning Regulations which limit the parking exemption for historic landmarks or contributing buildings based on the size of the increase or authorizes the Zoning Administrator to determine that parking spaces are required for some additions and not others.

3. The BZA has consistently held that additions to historic landmarks and contributing buildings in historic districts are exempt from the requirement to provide parking spaces. (See BZA Case Nos. 16631, 16681, and 16892 included in NCRC's Supplemental Statement). Additional BZA cases that have reached the same conclusion include: the Corcoran Gallery of Art (BZA Case No. 14703); the Religious Action Headquarters (BZA Case No. 16600); the Arena Stage (BZA Case No. 16933); and the German Marshall Fund (BZA Case No. 16953). The BZA should follow its well-established precedent in this case and determine that NCRC satisfies the requirements of §2100.5 and is exempt from the requirement to provide parking spaces on its property.

B. Based on a parking credit of 10 spaces, NCRC is not required to provide parking spaces for the additional intensity of use of its property.

1. 11 DCMR §§2100.1 and 2100.4 specifically allow for a "parking credit" the amount of which is based on the use existing on the property immediately prior to May 12, 1958.

2. The Zoning Administrator and the BZA have consistently interpreted §§2100.1 and 2100.4 to allow for a parking credit. In a recent ruling, this BZA discussed and approved the grand-fathering of parking spaces for a child/elderly development center in BZA Appeal No. 16839, related to the Metro Day Treatment Center. (See attached **Tab D**.) In that case, the BZA stated:

> To the extent that Metro Day Treatment Center is entitled to a parking credit, the credit derives from the long-standing administrative interpretation of §§2100.1 and 2100.4. Subsection 2100.4 provides that if the use of a building is changed to another use that requires more parking spaces than were required for the use existing immediately prior to the change, parking spaces shall be provided for the additional requirement in the amount necessary to conform to the schedule of required parking spaces in §2100.1.

Subsection 2100.1 requires that all buildings erected on or after May 12, 1958, be provided with the number of parking spaces specified in §2100.1. Read together, these subsections provide a "parking credit", the amount of which is based upon the use existing immediately prior to May 12, 1958.

3. Applied to the facts of this case, NCRC has a parking credit of 10 spaces. In 1958, NCRC was a registered nonconforming use with 14 full-time and 3 part-time staff, or an FTE of 15. At the time, the Zoning Regulations required 2 spaces for every 3 teachers or staff, for a parking credit of 10 spaces. (See attached **Tab E**.)

4. In 2003, NCRC is proposing to increase staff to 38 FTE. Thus, it is adding 23 staff for a parking requirement of 6 spaces for the increased intensity of use over and above what was in existence on the site in 1958. (The current Zoning Regulations require one parking space for every 4 staff members, thus 23 additional staff divided by 4 = 6 spaces.) With the credit of 10 spaces, NCRC is not required to provide any new spaces.

C. Based on consistent interpretations of 11 DCMR § 2115.11 by previous Zoning Administrators (Bob Kelly and Gladys Hicks), the tandem parking spaces proposed by NCRC fully satisfy the requirements of the Zoning Regulations regarding off-street parking spaces. In the recent decision of Mr. Kelly, the parking spaces were deemed to satisfy the requirements of the Zoning Regulations provided that the parking spaces are managed during a peak period to be determined by the District Department of Transportation ("DDOT"). (See attached **Tab F**.)

In the present case, DDOT can confirm that an employed attendant of NCRC will manage the spaces so that access is provided during all hours the school is in operation. Thus, the proposed tandem parking spaces fully satisfy the Zoning Regulations.

D. In the event that the BZA determines that NCRC is required to provide off-street parking spaces, the variance from the off-street parking requirements is an area variance, not a use variance.

1. The BZA has consistently applied the area variance test to child development centers seeking relief from the off-street parking requirements. (See, e.g., BZA Application No. 16955 for the Spanish Education Development Center, BZA Application No. 16911 of the Brandywine Street Association for a child development center, and BZA Application No. 16907 for the NCRC child development center in 1998. In that case, the BZA determined that the area variance was not needed since NCRC was entitled to the exemption. It nonetheless initially applied the area variance standard.)

2. The BZA has consistently applied the area variance test to other applicants seeking relief from the off-street parking requirements. (See, e.g., BZA Application No. 16913 for the Chase Plaza Dental Clinic; BZA Application No. 16885 for Jacqueline Joseph et al; and BZA Application No. 16843 for 800 8th Street, N.W., LLC.)

III. THE ADDITION TO THE MAIN BUILDING DOES NOT REQUIRE VARIANCE RELIEF RELATED TO THE NUMBER OF STORIES.

The main building on the NCRC property, pursuant to the clear and plain language of the definitions of building height and story found in the Zoning Regulations, has a height of 40 feet and includes only three stories. Thus, no additional variance relief related to the height of the building is necessary to construct the proposed addition to the main building on the NCRC property.

A. In a letter submitted to the Board on May 6, 2003, Lindsley Williams questioned whether the establishment of a classroom on a level below the main floor of the building creates a situation where the "resulting building *could* be seen as having four (4) stories." (emphasis added.) This interpretation of the Zoning Regulations is simply incorrect.

B. The Zoning Regulations clearly state that the height of a building is measured from the middle of the front of the building. (Section 199.1, "Building, Height of.", attached as **Tab G**.)

C. The Zoning Regulations also state that the number of stories is counted at the point *from which the height of the building is measured.* (Emphasis added, Section 199.1, "Story.", attached as **Tab H**.)

D. The main building on the NCRC property has a building height of 40 feet measured from the middle of the front of the building on Highland Place. **At this same measuring point on Highland Place, the main building has three stories.** The fact that the rear of the site slopes down and creates what appears to be an additional story, does not change the fact that pursuant to the explicit and clear definitions of "building height" and "story" in the Zoning Regulations, the number of stories of the main building is counted from Highland Place.

E. If Mr. Williams interpretation of the building height and number of stories requirements of the Zoning Regulations is followed, it would be necessary to determine that other properties on Highland Place are also nonconforming with respect to building height. Based on photographs already in the record, the property immediately adjacent to NCRC, the Badami/Neeley property at 3207 Highland Place, appears to have a level that is partially below grade along Highland Place in addition to the three stories that are completely above grade.

Thus, the BZA's decision on this issue will have potential impacts on more than just the NCRC property.

F. Further, even if it could be argued that the building is four stories and thus a nonconforming structure, the Zoning Regulations permit additions to nonconforming structures so long as they do not increase the nonconformity. Here, no part of the addition is on the front of the building on Highland Place so as to increase the number of stories and hence the nonconformity. Thus, the proposed addition to the main building is permitted as a matter of right. (See 11 DCMR § 2001.3.)

IV. REQUEST FOR RECONSIDERATION OF THE BOARD'S DETERMINATION THAT THE PROPOSED CARRIAGE HOUSE IS A PRINCIPAL STRUCTURE AND IS REQUIRED TO BE LOCATED ON ITS OWN RECORD LOT. THE CARRIAGE HOUSE IS A PERMITTED ACCESSORY BUILDING AND USE.

In researching the area variance issue, and after reviewing the BZA's decision in Appeal No. 16839 and the legislative history to Zoning Commission Case No. 98-8 (which amended the text of the Zoning Regulations addressing child/elderly development centers), it became clear that the BZA needs to reconsider its decision that the proposed Carriage House is not an accessory structure and use on the NCRC property. The following information is submitted in support of a request that the BZA reconsider its decision that the proposed Carriage House necessitates area variance relief from §3202.3.

A. The Zoning Regulations definition of a child/elderly development center does not restrict accessory uses to only "counseling, education, training and health and social services of the parents or principal guardians of children attending the center." This new language was included in the Zoning Regulations in 1999, as a result of Zoning Commission Case No. 98-8 (see attached **Tab I**), in order to give the BZA additional authority to approve such uses as part of child development centers. In doing so, the Zoning Commission recognized that these additional uses were not the typical accessory uses for child/elderly development centers and to accommodate such uses, the BZA asked the Zoning Commission to amend the Zoning Regulations to permit these new uses.

B. The BZA's decision in the Metro Day Treatment Center BZA Appeal case (previously described and attached as **Tab D**) is a recent example where the BZA has declined to adopt a narrow and restrictive definition of a child/elderly development center. In the Metro Day Treatment Center case, the BZA upheld the determination of the Zoning Administrator that the Metro Day Treatment Center for mentally retarded adults qualified as a "similar program and facility" under the definition of "child/elderly development center." In doing so, the BZA stated, "The Zoning Regulations cannot realistically identify every potential use of property. A day treatment center for mentally retarded adults is similar to the programs and facilities encompassed within the definition of a "child/elderly treatment center", both with respect to the nature of the use – the care, education,

counseling, training and other social services provided – and with respect to impacts of the use on the public."

C. In amending the Zoning Regulations, the Commission did not take away from child/elderly development centers the right to have accessory uses under Section 202.11 that are customarily incidental to the primary child/elderly development center use. Similarly, the Board's recent decision in the Metro Day Treatment Center case evidences the Board's intent to give a broad interpretation to the Zoning Regulations' definition of a "similar program and facility" for a child development center. Accordingly, use of the Carriage House on the NCRC property for additional classrooms, teacher meeting rooms, athletic space, performing arts space, etc., should be allowed as accessory uses to the principal use.

D. On June 13, 1990, the Zoning Administrator determined that the existing playhouse on the NCRC property was a permitted accessory building and use to the principal child development center use on the property. Thus, NCRC was not required to have a separate certificate of occupancy for the playhouse. NCRC's use of the playhouse building was recognized as accessory even though the playhouse included classroom and teaching space for the students. (See letter signed by Gladys Hicks, dated June 13, 1990 and meeting agenda attached as **Tab J**.)

E. There can be no doubt that the proposed Carriage House is a permitted accessory use and structure. It will house two of the six classrooms for the school as well as indoor motor space for the students. It is located on the same lot as the principal use, and use of the building for classrooms and motor activity is clearly a use "customarily engaged in by students."

F. Child development centers are schools, albeit schools for young children, and, as such, they are permitted to have the same accessory uses as other schools. The definition of a child development center makes clear that this definition includes facilities generally known as pre-school or nursery schools. (The definition also encompasses children up to the age of 15, so presumably even elementary schools could fall within this definition.) Further, the parking requirements for child development centers are listed under the "schools" category of the Zoning Regulations. Thus, under the Zoning Regulations, child development center's are schools.

G. The DCCA has made clear in a number of school cases, that schools are permitted broad latitude in determining what uses are accessory and, further, that the definition of accessory changes over time to accommodate changes in society and school programs. Further, the DCCA has also made clear that unless a regulation specifically excludes a use, it will not be interpreted restrictively. Among the uses approved by the DCCA as accessory to school uses are performing arts centers, athletic buildings, classroom building, and even a cogeneration facility.

The test is whether the use is on the same lot (or campus in the case of a university) and whether it is customarily incidental and accessory to the principal use. It could hardly be argued that classrooms and an indoor motor play room are not accessory to NCRC's use of the property for a nursery school. Indeed, until the Carriage House is constructed, the existing playhouse provides the indoor motor space that has already been determined to be accessory to NCRC's use of the property.

H. The well-established zoning treatises support the finding that the proposed Carriage House is an accessory use. See, e.g., Rathkopf, Section 30:13 which states that "By implication, permission to operate a school includes permission to locate upon the property those accessory uses which are customarily engaged in by students." See, also, Williams, Section 76.21, which points out that restrictions on permitted educational uses of the property are impermissible and citing the DCCA case, The National Cathedral Neighborhood Ass'n v. DC BZA, 753 A2d 533 (DC 1985) for the holding that facilities related to the educational mission of the school did not lose that character simply because of their size and mass. (See attached **Tab K**.)

of alimony, as it was in *Quarles, supra*, and in *Mazique v. Mazique*, 123 U.S.App.D.C. 48, 356 F.2d 801 (1966), where alimony was denied the deserting wife. Nonetheless, whether controlling or not, desertion is a factor which must be considered in the judgment of what would be a just and proper determination of both whether to award alimony and if so, the amount thereof.[3]

[3, 4] This holding does not conflict with the holdings in *Lee* and *Roberson*. The holdings of those two cases are that desertion by a wife (and, presumably, a husband) "is a bar to a claim for separate maintenance." *Roberson, supra* at 770. To hold otherwise, the court reasoned in *Lee*, "would encourage families to separate rather than to remain together to resolve their differences." *Lee, supra* at 826. Once a divorce is granted, however, the rationale justifying denial of support payments during separation fails. Consequently, the court then becomes bound to consider the equities of the case in awarding or disallowing alimony. *See Quarles v. Quarles, supra*, and D.C.Code 1978 Supp., § 16–913. Therefore, we hold that the trial court erred in concluding that *Lee* and *Roberson* bar appellant's claim for alimony.

IV

[5] Finally, in calculating the amount due each party in the division of the property, the trial court awarded the appellant $5,000 of the proceeds from the sale of the marital house, the amount she contributed for the down payment. It appears that this division of the property overlooks the proportional amount of appreciation resulting from the wife's contribution. While we acknowledge that the trial court has broad discretion in apportioning jointly held property, *McGean v. McGean*, D.C.App., 339 A.2d 384 (1975), we find no indication on the record that the amount realized from appreciation of the house was considered by the court in its award. Accordingly, we also direct that on remand the trial court consider whether the wife is not also entitled to a share of the appreciation in some proportion to her part of the down payment.

For the foregoing reasons, we vacate the judgment of the trial court insofar as it denied alimony and remand for further proceedings on the question of alimony and property division. In all other respects the judgment is affirmed.

So ordered.



Richard N. WOLF, Petitioner,

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent,

David J. DuBois, Intervenor.

No. 12122.

District of Columbia Court of Appeals.

Argued Oct. 16, 1978.

Decided Jan. 23, 1979.

Neighboring property owner petitioned for judicial review of decision of Board of Zoning Adjustment granting property owner variance from zoning regulation. The Court of Appeals, Mack, J., held that: (1) variance sought fell under rubric of area variance, requiring only showing of "practical difficulties"; (2) finding of "practical difficulties" by Board of Zoning Adjustment was neither arbitrary nor capricious; (3) the Board acted in "substantial compliance" with statute requiring it to discuss neighborhood commission recommendations in zoning cases, and (4) responses by the Board to contentions raised on record, added to the Board's analysis of practical diffi-

3. Nothing in this opinion should be construed to preclude pendente lite support payments, which can be ordered at the trial court's discretion. D.C.Code 1978 Supp., § 16–911.

culties of property owner's situation, demonstrated that decision of the Board granting area variance was based upon substantial evidence.

Affirmed.

1. Zoning and Planning ⇐493

City zoning regulation, by use of disjunctive "or" in phrase "Where * * * strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property," sets up separate statutory requisites to granting of variances, that is, showing of "practical difficulties" or "undue hardship." D.C.C.E. § 5–420.

2. Zoning and Planning ⇐493

Dichotomy exists between "area variances" and "use variances," and statutory requisite of "practical difficulties" applies to showing of former and statutory requisite of "undue hardship" to showing of latter. D.C.C.E. § 5–420.

3. Zoning and Planning ⇐512

Where variance sought was one for conversion of row dwelling to accommodate three apartment units instead of two plus facilities for roomers, under ordinance requiring lot size of 900 square feet per unit, while actual lot area was only 2,164 square feet, no essential change in use of subject property was contemplated, and thus variance requested fell under rubric of area rather than use variances and did not require showing of both undue hardship and practical difficulties, but only a showing of practical difficulties. D.C.C.E. § 5–420.

4. Zoning and Planning ⇐531

Determinations with respect to treatment and classification of proposed variances are best made on ad hoc basis by agency from whose regulations such variances are sought.

5. Zoning and Planning ⇐701

When the Court of Appeals reviews Board of Zoning Adjustment's construction of regulations, which regulations were adopted by the Zoning Commission, the Board's interpretation is controlling unless it is plainly erroneous or inconsistent with the regulation.

6. Zoning and Planning ⇐493, 607

Determination of whether "practical difficulties" exist in "area" variance case, like determinations of whether variance at issue is one of area or use, must be made case-by-case, and must be judicially reviewed under rule of deference to administrative expertise. D.C.C.E. § 5–420.

7. Zoning and Planning ⇐607

Where factual findings of Board of Zoning Adjustment on existence or not of "practical difficulties" in area variance case are neither arbitrary nor capricious, they will be upheld on review. D.C.C.E. § 5–420.

8. Zoning and Planning ⇐503

Area variance may relate to practical difficulties attending structure on subject property and not just land itself.

9. Zoning and Planning ⇐512

Where two-family character of subject property made marketability of its approximately 3,000 square feet as single unit unfeasible, structure of the property worked against its effectively functioning as two-unit apartment house, and monthly expenses incurred by property owner for the property were approximately $1,276 but monthly rental of two apartments and rooms would be about $1,250 whereas such rental for three apartments would be about $1,350, finding of "practical difficulties" by Board of Zoning Adjustment in proceedings on property owner's petition for area variance on lot under 2,700 square feet was neither arbitrary nor capricious. D.C.C.E. § 5–420.

10. Zoning and Planning ⇐541

"Substantial compliance" with statute requiring Zoning Board of Adjustment to discuss neighborhood commission recommendations in decisions in zoning cases means such compliance with essential requirements of the provision as may be sufficient for accomplishment of purposes of the provision. D.C.C.E. § 1–171i(d).

11. Zoning and Planning ⇐512

Where sole concern identified by neighborhood commission in its letter of opposition to area variance sought by property owner was whether "permitting conversion of a house on a lot of under 2,700 square feet to three units would be in conflict with the protection of the character of the area as provided by zoning," and such concern was specifically addressed by members of the Board of Zoning Adjustment in their decision granting the variance, the Board acted in "substantial compliance" with statute requiring it to discuss neighborhood commission recommendations in zoning cases even though the Board failed to identify the neighborhood commission as the source of such concern. D.C.C.E. § 1–171i(d).

12. Zoning and Planning ⇐538

Responses by Board of Zoning Adjustment to contentions raised on record in proceedings on property owner's petition for area variance, added to Board's analysis of practical difficulties of property owner's situation, demonstrated that decision of the Board granting area variance was based upon substantial evidence. D.C.C.E. § 5–420.

13. Zoning and Planning ⇐497

Rule as to self-imposed hardship does not apply in case of area as opposed to use variance. D.C.C.E. § 5–420.

14. Zoning and Planning ⇐625

In proceedings on property owner's petition for zoning variance, interpretation by Board of Zoning Adjustment of practice rule, which interpretation prevented neighboring property owner's counsel from reading into record as the neighboring property owner's direct testimony prepared statement by neighboring property owner in opposition to granting of variance, where such owner was not present at hearing, but which did not prevent introduction of the same statement into record of the case, was not plain error.

15. Attorney and Client ⇐22

Attempt by neighboring property owner's counsel, in proceedings on property owner's petition for zoning variance, to represent himself as both neighboring property owner's lawyer and agent so as to qualify to read neighboring property owner's statement in opposition to granting of variance as testimony and face cross-examination in neighboring property owner's place was inconsistent with Code of Professional Responsibility ethical consideration discussing responsibilities of counsel to decide whether he will be witness or advocate in specific case. D.C.C.E. Code of Professional Responsibility, EC5–9.

Richard N. Wolf, pro se, with whom Robert J. Higgins, Washington, D. C., was on the briefs, for petitioner.

Richard W. Barton, Deputy Corp. Counsel and Dennis McDaniel, Asst. Corp. Counsel, Washington, D. C., entered appearances for respondent and adopted the brief of the intervenor.

Iverson O. Mitchell, III, Washington, D. C., with whom Norman M. Glasgow and Whayne S. Quin, Washington, D. C., were on the brief, for intervenor.

Before NEWMAN, Chief Judge, and YEAGLEY and MACK, Associate Judges.

MACK, Associate Judge:

This is an appeal from a decision of the District of Columbia Board of Zoning Adjustment granting an area variance. Petitioner has argued that the Board erred in holding the proposed variance to be one of area alone; that it also erred in finding, as a requisite for granting the variance, practical difficulties in conforming the subject property to zoning regulations; and that it erred in the procedure followed with respect to both the hearing and actual decision in the instant case. For reasons discussed herein, we affirm the Board's decision.

The structure for which the area variance was sought (by intervenor, David J. DuBois) is a two-family row dwelling located at 1115 Independence Avenue, S.E., in Philadelphia Row, in the Capitol Hill portion of

the city, denoted as the R–4 District for zoning purposes. The structure was constructed in 1912. It is located on a lot 2,164 square feet in size. It has three stories—a first and second floor plus a basement—with a gross floor area of 1,500 square feet per floor. The subject property is larger than any of the 70 of its neighboring houses within 200 feet. Moreover, of the 482 residential structures in the eight squares surrounding the subject property, only six are as large.

Mr. DuBois purchased the subject property in 1973. He planned a remodeling of the premises: the top two floors in a Victorian style, and the basement as an apartment unit. Prior to his purchase, the District of Columbia Board of Zoning Adjustment (BZA) had approved the premises for conversion into a four-unit apartment house. The approval for conversion by the BZA was contained in Application No. 9062, which resulted in the granting of a variance from the restrictions of zoning regulations. The variance exempted the subject property from the requirement of District of Columbia Zoning Regulations § 3301.1, that a minimum lot area of 900 square feet be provided for each dwelling unit on the premises.

Upon learning, subsequent to his purchase, that this approval for a variance had expired, Mr. DuBois applied to the BZA for a new variance to permit conversion of the premises into a three-unit apartment house. It appears that he may have been unfamiliar with BZA hearing procedure: he did not retain counsel, and he was not aware of the burden of proof he had in seeking a variance. The BZA denied intervenor's request for a variance in October 1973, pursuant to Application No. 11444.

Following the BZA's 1973 decision, intervenor engaged in a remodeling of the premises consistent with zoning regulations. The top floor of the structure was rented out as a single unit of 1,500 square feet; the first floor and basement were combined into another single unit of 3,000 square feet, with 12 rooms. The larger of these two units was finally rented in March of 1975, with the basement reserved as a place for roomers in an accessory use permitted by District of Columbia Zoning Regulations § 3101.53.

In 1976, Mr. DuBois, in Application No. 12278, again applied for an area variance for the subject property from § 3301.1 of the regulations. His aim, once again, was conversion of the premises from a two-to a-three unit structure. In furtherance of his application, intervenor was able to secure the support for a variance of the owners or residents of 52 of the 70 properties within 200 feet of the subject property, and also of the Capitol Hill Restoration Society, a civic group.

At the hearing held by the BZA on his application on February 16, 1977 Mr. DuBois, who testified on his own behalf, advanced four bases for the granting of a variance, to wit: 1) the exceptional size of the structure on the subject property; 2) the unique layout of that structure, which had a depth of about 80 feet; 3) the practical difficulties in the R–4 District of either renting the first floor and basement as a single 3,000 square foot apartment unit in a two-family dwelling as opposed to a single-family house, or of marketing the basement separately as a place for more transient tenants (*i. e.*, roomers); and 4) the relationship of market and income to cost in connection with the use of the premises as a two-unit structure. In elaborating upon this fourth basis, intervenor offered evidence that his monthly expenses for the premises ran approximately $1,276 but that his monthly rent ran only $1,250: $500 for the top floor apartment, $450 for the first floor, and $300 for the basement. (These rents were consistent with the going market rate for properties similar in quality to the instant premises.) The projections offered by intervenor showed that, were the basement converted by means of an area variance from a rooming place into a third apartment unit, its monthly rent would amount to $400, thus raising rents for the premises to a level in excess of expenses for the premises. Intervenor's evidence also indicated that vacancy of the basement

would be greater were it to remain a rooming place rather than an apartment unit, and thus would be less likely to bring in any rent at all absent a conversion.

Mr. DuBois also offered testimony in support of his application from several parties. Anthony Reynolds, a real estate appraiser and consultant who had inspected the subject property, testified as an expert that the structure on the property was of a high quality of workmanship. He also testified that, given its size, layout, and two-family design as compared with the size and layout of its neighboring single-family houses, the structure had an anomalous character which generated practical difficulties in renting it within the restrictions of § 3301.1 of the zoning regulations' minimum lot requirements—*i. e.*, as a two-unit dwelling with an accessory area for roomers. Mr. Reynolds stated that the problems of renting out the structure as two units with a rooming area precipitated a loss in income to intervenor which in turn raised the possibility that the structure would suffer from a lack of maintenance. He further stated that the conversion of the basement from a rooming area to a third apartment unit would not increase the density of the structure on the subject property, or alter its exterior, or work an adverse effect on the market value of any nearby piece of property. Hence, Mr. Reynolds concluded that conversion of the structure to a three-unit apartment house would not undermine the character of the R–4 District. His conclusion was shared by several persons who resided near the subject property, and who testified on behalf of intervenor at the BZA hearing.

Petitioner was one of those living near the subject property who opposed intervenor's application for a variance. He did not appear at the hearing on the application but was represented by an attorney who offered to the BZA a letter from petitioner detailing his objections to the variance. The BZA accepted the letter into the record but denied counsel leave to read it aloud, believing that such oral direct evidence, in the absence of petitioner, would abridge the right of others to cross-examine.

Petitioner in his letter argued that the requested variance involved a change, hybrid in nature, as to use and area, that a dual showing of both "practical difficulties" and "undue hardship" was required, and that Mr. DuBois had not met his burden in this regard. Petitioner also argued that any difficulties or hardship incurred by Mr. DuBois with regard to the property were self-imposed and therefore as a matter of law not a proper basis for granting a variance,[1] and that the granting of such variance would endanger the general zoning scheme for the District, deprive him of light and air and adversely increase the density of the area. Finally he argued that intervenor's financial picture with respect to the property was better than it had been portrayed.

Petitioner's opposition to the proposed variance was shared by several Capitol Hill residents and by the Advisory Neighborhood Commission for the R–4 District, all of whom submitted letters against intervenor's application to the BZA.

In Order No. 12278, dated April 11, 1977, the BZA approved intervenor's application for an area variance. The BZA was of the opinion that the variance requested by intervenor was one of area, since the only requirement not met for a conversion as of right of the subject property was the one of 900 square feet per unit—*i. e.*, of area. The BZA also was of the opinion that intervenor had demonstrated "practical difficulties" sufficient for the granting of the area variance. In its decision, the BZA made fifteen findings of fact, all in essential agreement with intervenor's presentation and that of his supporting witnesses, as described herein. The BZA noted the existence of opposition to the granting of a variance in general terms.

From the BZA's order in the instant case, this petition for review followed.

1. *Taylor v. D. C. Bd. of Zoning Adjustment*, D.C.App., 308 A.2d 230 (1973).

I.

[1, 2] In this court petitioner argues that the BZA acted contrary to applicable law in granting the challenged variance. We disagree. District of Columbia Zoning Regulations § 8207.11, adopted pursuant to D.C.Code 1973, § 5–420, circumscribes the power of the BZA to carve out variances from its regulated zoning schemes as follows:

> 8207.11 Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

Consistent with D.C.Code 1973, § 5–420, § 8207.11 of the regulations, by use of the disjunctive "or," sets up separate statutory requisites to the granting of variances—*i. e.*, a showing of "practical difficulties" *or* "undue hardship." *Palmer v. Board of Zoning Adjustment*, D.C.App., 287 A.2d 535, 540 (1972). In its decision in the instant case, the BZA correctly noted that in *Palmer* we "adopted for this jurisdiction the dichotomy between area variances and use variances," applying the statutory requisite of "practical difficulties" to a showing of the former, and applying the separate statutory requisite of "undue hardship" to a showing of the latter. *Id.* at 541. We viewed the difference between the two kinds of variances as one of degree:

> [A]n area variance, relating to restrictions such as side yard, rear yard, frontage, setback or minimum lot requirements, does not alter the character of the zoned district, whereas a use variance seeks a use ordinarily prohibited in the particular district. [*Id.*].

We therefore applied the more easily satisfied requisite of "practical difficulties" to a showing of the less sweeping of the two variances, the area variance. In the instant case, the BZA stated that only the failure of the subject property to conform to the minimum lot requirement of 2,700 square feet (or 900 square feet per unit for three units) prevented intervenor's securing conversion of his two-family flat into a three-unit apartment facility as a matter of right. The BZA found that the sole relief requested by intervenor related to the area of his lot, and so relying on *Palmer* employed the "practical difficulties" test appropriate to consideration of an area variance. In light of our holding in *Palmer*, we would be hard-pressed to overturn the findings of the BZA in the instant case, both as to the kind of variance requested and the requisite showing for its being granted.

[3] The *Palmer* case represents as far as we choose to go in judicially defining area and use variance, or hybrids thereof. The determination of whether a variance is one of area, use, or something else, is not made easier, or more just, by resort to rigid typecasting for the purpose of establishing precedent in the law of zoning. "Some variances resist easy classification. A variance to reduce off-street parking requirements, for example, may be treated as an area variance, but it has also been termed a use variance." A. Anderson, American Law of Zoning Vol. 3 § 18.46 (2d ed. 1977). So it was that in *Palmer v. Board of Zoning Adjustment, supra* at 541, we held the off-street parking variance requested to be a hybrid of both use and area. The variance granted to intervenor in the instant case, however, was one for conversion of a row dwelling to accommodate three apartment units. No essential change in the use of the subject property—*i. e.*, from a multiple residence to something else—was contemplat-

ed; the fundamental change sought was one relating to minimum lot restrictions of the R–4 District. Therefore, the variance requested by intervenor fell under the rubric of area variances as defined by us in *Palmer*. In light of *Palmer*, then, we are not persuaded by petitioner's contention, that the variance granted by the BZA to intervenor was in truth a hybrid of both a use and an area variance which under the law required a showing of both undue hardship *and* practical difficulties.

[4, 5] Determinations with respect to the treatment and classification of proposed variances are best made, we think, on an ad hoc basis, by the agency from whose regulations those variances are sought. Judicial review with respect to those determinations is in general best made, we think, under the well established rule of deference to administrative expertise. "When we review the BZA's construction of regulations, which were adopted by the Zoning Commission, the BZA's interpretation is controlling unless it is plainly erroneous or inconsistent with the regulation." *Dietrich v. District of Columbia Board of Zoning Adjustment*, D.C.App., 320 A.2d 282, 286 (1974). *Accord*, *Taylor v. District of Columbia Board of Zoning Adjustment*, D.C.App., 308 A.2d 230, 233–34 (1973). The BZA in the instant case received evidence that the subject property was at the time of intervenor's application for a variance already an anomaly in its neighborhood—larger than any of the houses within 200 feet, with more than the average gross floor space, and constructed as a two- and not single-family flat. The BZA decided that, given the preexisting nature of the subject property, the proper variance for its conversion was one relating to area—*i. e.*, to a mere departure from minimum lot restrictions—and not to a radical change in the character of its use. "The Board arrived at this conclusion after examining the evidence and interpreting the definitions in its regulations . . . . Its interpretation is binding on this court unless it is plainly erroneous or inconsistent with the regulation." *Legislative Study Club, Inc. v. District of Columbia Board of Zoning Adjustment*, D.C.App., 359 A.2d 153, 155 (1976). Given the evidence presented to the BZA, we find its treatment of the proposed variance as one of area requiring a "practical difficulties" analysis, to have been devoid of plain error.

II.

[6, 7] Petitioner argues, nevertheless, that intervenor in the instant case did not make a showing of "practical difficulties" sufficient for the BZA to have granted him the requested area variance. "In determining whether to authorize a variance from the terms of the zoning ordinance because of special conditions making enforcement of the ordinance inequitable, a board of appeals is vested with a wide discretion unless it is abused." E. Yokley, Zoning Law and Practice Vol. 2 § 15–7 (3d ed. 1965). *See Red Lion Broadcasting Co., Inc. v. F.C.C.*, 395 U.S. 367, 381, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969); *Udall v. Tallman*, 380 U.S. 1, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965); *Power Reactor Development Co. v. International Union of Electrical Radio & Machine Workers*, 367 U.S. 396, 408, 81 S.Ct. 1529, 6 L.Ed.2d 924 (1961); *Unemployment Compensation Commission v. Aragon*, 329 U.S. 143, 153, 67 S.Ct. 245, 91 L.Ed. 136 (1946); *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 413–14, 65 S.Ct. 1215, 89 L.Ed. 1700 (1945); *Watergate Improvement Associates v. Public Service Commission*, D.C. App., 326 A.2d 778, 785 (1974). Determinations of whether "practical difficulties" exist, like determinations of whether the variance at issue is one of area or use, must be made case-by-case, and must be judicially reviewed under a rule of deference to administrative expertise. The ad hoc rule for determinations with respect to "practical difficulties" derives from *Palmer v. Board of Zoning Adjustment*, *supra* at 542: "The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." The rule of deference to agency action with respect to those determinations derives from *Taylor v. District of Columbia Board of Zoning Adjustment*, *supra* at 236: Where the BZA's factual findings on the

existence or not of "practical difficulties" are neither arbitrary nor capricious, they will be upheld on review. It is in light of *Palmer* and *Taylor* that we now examine the finding of the BZA, that "practical difficulties" did exist in the instant case.

[8, 9] The BZA in its decision noted several factors which gave rise to "practical difficulties" for intervenor in conforming to the lot restrictions imposed by regulation in the R–4 District. The BZA indicated that the two-family character of the subject property made the marketability of its approximately 3,000 square feet as a single unit unfeasible, since the rental market for such a unit is normally restricted to single-family dwellings. The BZA also indicated that the structure of the subject property—specifically its large size, unique layout, and exceptional quality of workmanship—worked against its effectively functioning as a two-unit apartment house.[2] With respect to the renting of the basement of the subject property as a place for roomers accessory to the first floor apartment, the BZA pointed out that such a renting is generally restricted to single-family dwellings. Finally, the BZA noted that the monthly expenses incurred by intervenor for the subject property were approximately $1,276, but that the annual rental as computed monthly of two apartments and rooms would be about $1,250 (a loss), whereas such rental for three apartments would be about $1,350 (a return). This loss was only part of a larger loss growing out of a serious problem encountered in renting the 3,000 square foot unit as a single unit. In view of these particular facts and circumstances relating to the subject property, we believe that the finding made by the BZA of "practical difficulties" was neither arbitrary nor capricious, and so we affirm it.

III.

(A) Also at issue in the instant case is whether the BZA made findings of fact as required by law. In particular, the argument is advanced by petitioner in his reply brief that the opposition of the Advisory Neighborhood Commission (ANC) 6B to the proposed area variance was not addressed by the Board as required under D.C.Code 1978 Supp., § 1–171i. That statutory section provides for the following:

> (a) Each Advisory Neighborhood Commission . . . may advise the Council of the District of Columbia, the Mayor and Each Executive Agency and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area.
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> (d) . . . . The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken.

We believe that the Board's findings were sufficient enough, and specific enough, to be in conformity with what the law required.

Recently, we discussed the requirement, in D.C.Code 1978 Supp., § 1–171i(d), that an independent agency of the District give "great weight" to recommendations of the ANC on a public policy proposal. *Kopff v. District of Columbia Alcoholic Beverage Control Board*, D.C.App., 381 A.2d 1372 (1977). We concluded that

2. The BZA in its decision correctly cited *Clerics of St. Viator, Inc. v. D.C. Bd. of Zoning Adjustment*, D.C.App., 320 A.2d 291, 294 (1974), for the proposition that an area variance may relate to practical difficulties attending the *structure* on the subject property, and not just the land itself. While *Clerics* involved a use variance, its holding broadly speaks of variances, and its rationale, we agree, encompasses situations like the instant case in which an area variance is requested.

> . . . "great weight," as used in the ANC [§ 1–171i(d)] Act, does not build in some kind of quantum of presumption of deference to be accorded ANCs. It means, rather, that an agency must elaborate, with precision, its response to the ANC issues and concerns. It is a statutory method of forcing an agency to come to grips with the ANC view—to deal with it in detail, without slippage. [*Id.* at 1384.]

In *Kopff*, it was suggested that any agency, responding to recommendations of the ANC, need not, as part of its decision, particularize the source of those recommendations. *Id.* To the contrary, we held "that 'great weight' implies explicit reference to each ANC issue and concern *as such* as well as specific findings and conclusions with respect to each." *Id.* [Emphasis in original.]

It appears from the record in the instant case that the BZA in its decision did not make specific mention of the ANC's opposition to the area variance ultimately granted intervenor. Instead, the BZA found as fact that, "There was opposition registered at the Public Hearing on this application." The ANC opposition was in the form of a letter to the BZA dated January 10, 1977. The letter reprinted the resolution adopted by the ANC on the subject of the proposed variance, to wit:

> RESOLVED, that Advisory Neighborhood Commission 6B *OPPOSES* the application of David J. Dubois for an area variance to permit conversion of 1115 Independence Avenue, S.E. from two to three units, in spite of the support of the residents for the applicant because permitting conversion of a house on a lot of under 2700 square feet to three units would be in conflict with the protection of the character of the area as provided by zoning.

[10, 11] The failure of the BZA in its decision to note with particularity the existence of the statement of the ANC may arguably constitute a departure from the literal requirements laid down in *Kopff* with respect to D.C.Code 1978 Supp., § 1–171i(d); nevertheless, we believe that the findings of fact by the BZA in the instant case were legally sufficient. The decision of the BZA in the instant case was made on March 8, 1977, and so preceded our decision in *Kopff*, which was made on December 20, 1977. We have previously held that

> for administrative decisions rendered prior to the guidance afforded by *Kopff*, strict adherence to the spec requirements of that opinion not only might serve no substantive purpose but could well result in inequity. . . . [T]he sensible and equitable approach is to require substantial compliance with D.C. Code 1978 Supp., § 1–171i(d) for cases in which the administrative decision preceded the date of that opinion. [*Wheeler v. District of Columbia Board of Zoning Adjustment*, D.C.App., 395 A.2d 85, 90 (1978).]

By "substantial compliance" with § 1–171i(d), we meant " 'such compliance with [the] essential requirements of the . . provision as may be sufficient for the accomplishment of the purposes thereof.' " *Opinion of the Justices*, 275 A.2d 558, 562 (Del.1971), *quoted in Wheeler v. District of Columbia Board of Zoning Adjustment*, *supra*, at 90. It appears to us from the record that such compliance with the provisions of § 1–171i(d) was achieved by the BZA in the instant case. The sole concern identified by the ANC in its letter of opposition to the area variance was whether "permitting conversion of a house on a lot of under 2,700 square feet to three units would be in conflict with the protection of the character of the area as provided by zoning." That concern was specifically addressed by the members of the BZA in their decision granting intervenor the variance:

> [S]ince there will be no substantial changes and no substantial increase in density, we see no likelihood of an adverse effect on the neighborhood. We believe that the grant is in keeping with the intent of the Zoning Regulations and Maps.

The failure of the BZA to identify the ANC as the *source* of the aforementioned concern

clearly did not prevent the Board from coming "to grips" with that concern in its findings. The BZA, then did "elaborate, with precision, its response to the ANC issues and concerns," and so, in our judgment, acted in substantial compliance with D.C. Code 1978 Supp., § 1–171i(d).

(B) Petitioner's broad contention with respect to the BZA's findings of fact is that they were insufficient under the law. The Administrative Procedure Act of the District of Columbia defines the form such findings must take:

> **The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence.** [D.C.Code 1973, § 1–1509(e).]

It is clear from the record that the BZA did address with specificity those facts contested in the instant case. Petitioner argued in his letter to the BZA that granting intervenor an area variance to proceed with his plan for three apartment units on the subject property would work a deleterious increase in the density of the R–4 District. The BZA in its decision, however, noted that density would be greater if the basement of the subject property remained a place for from four to five roomers than if conversion of the basement into a third apartment unit were allowed. Petitioner argued that the primary purpose behind the intervenor's request for a variance was to reap a rate of return more handsome than that of other property owners in the R–4 District who had likewise engaged in renovation efforts. The BZA, however, indicated that conversion of the basement into a third apartment unit would work only a slight increase in income and a marginal profit to intervenor, permitting him just enough money to continue his maintenance of the subject property.

[12, 13] With regard to petitioner's argument that enlargement of the subject property to three apartment units would deprive him of light and air, the BZA noted that conversion of the structure by means of an area variance would not require any exterior and only minor interior changes. **The BZA's responses to the contentions raised on the record, added to its analysis of the practical difficulties of intervenor's situation, convinces us that the decision of the agency in the instant case granting an area variance was based upon substantial evidence, as required.**[3]

IV.

[14, 15] Finally, petitioner maintained that the decision of the BZA not to allow his counsel at the hearing to read into the record his prepared statement of opposition to the granting of a variance as his direct testimony was reversible error. The BZA interpreted 22 DCRR 4.61 as barring the oral introduction of the statement, where petitioner was absent from the hearing on the instant case and hence unavailable for cross-examination.[4] The BZA, however, did permit the introduction of the same statement into the record of the case, absent an oral reading. In view of the fact that the statement was not totally excluded as evidence in the instant case, we believe the BZA's interpretation of its own rule of practice, 22 DCRR 4.61, not to be reversible error. Under the rule of *Dietrich v. District of Columbia Board of Zoning Adjustment*, *supra*, and *Taylor v. District of Columbia Board of Zoning Adjustment*, *supra*, regarding judicial deference to administrative interpretations of administrative regulations, we affirm as absent plain error the

3. The BZA in its decision did not address the argument of petitioner, that intervenor's hardship with respect to the subject property was self-imposed and therefore not a proper basis for securing a variance, under *Taylor v. D.C. Bd. of Zoning Adjustment*, *supra*. The BZA was not in error in not addressing this argument, since the rule of *Taylor* as to self-imposed hardship does not apply in the case of an area as opposed to a use variance. *A.L.W., Inc. v. D.C. Bd. of Zoning Adjustment*, D.C. App., 338 A.2d 428, 431–43 (1975).

4. 22 DCRR 4.61 reads as follows:

> Every party may appear at a hearing to offer evidence and cross-examine.

construction afforded 22 DCRR 4.61 by the BZA.[5]

CONCLUSION

We have carefully examined all of petitioner's contentions relating to the decision of the BZA in the instant case, and conclude that they are unpersuasive. The decision of the Board is therefore

Affirmed.

Samuel M. WASHINGTON, Appellant,

v.

UNITED STATES, Appellee.

Leroy FERGUSON, Appellant,

v.

UNITED STATES, Appellee.

Nos. 12604, 12842.

District of Columbia Court of Appeals.

Argued Nov. 8, 1978.

Decided Jan. 24, 1979.

Defendant was convicted by a jury in the Superior Court, District of Columbia, Harold H. Greene, J., of felony-murder, armed robbery, assault with a dangerous weapon, and carrying a pistol without a license. Codefendant was convicted of armed robbery. Defendants brought consolidated appeal. The Court of Appeals, Kelly, J., held that: (1) there was no reversible error in trial court's failure to give, sua sponte, an immediate cautionary instruction concerning detective's impeachment, through a prior inconsistent statement, of key defense witness; (2) no error occurred in instructing jury that, given a finding that Government has proven all elements of crime, jury "must" find defendants guilty; (3) trial court did not abuse its discretion in allowing as showing bias, Government's cross-examination of defense witness as to whether she told another witness that codefendant wanted such other witness to secrete herself until after trial; (4) error occurring in overruling objection to statement during closing argument of government counsel's belief in veracity of a government witness was not sufficient to justify reversal, and (5) fact that government counsel should not have announced, in presence of jury, that he was handing over *Jencks* material to defense counsel was not sufficient to justify reversal.

Affirmed.

1. Criminal Law ⇐641.13(2)

Fact that defendant's counsel declined trial judge's offer to instruct jury on subject of prior inconsistent statements, which offer was made after trial judge had concluded its jury instructions and counsel for Government noted to trial judge that he may want to instruct jury on subject of prior inconsistent statements, did not amount to ineffective assistance of counsel.

5. We also note, that the attempt by petitioner's counsel at the hearing to represent himself as both petitioner's lawyer and agent so as to qualify himself to read petitioner's statement aloud as testimony and face cross-examination in petitioner's place was inconsistent with the American Bar Association Code of Professional Responsibility. *Shay v. D.C. Bd. of Zoning Adjustment*, D.C.App., 334 A.2d 175, 178 n.8 (1975). Ethical Consideration 5-9, ABA Code of Professional Responsibility (1972) reads as follows:

> Occasionally a lawyer is called upon to decide in a particular case whether he will be a witness or an advocate. If a lawyer is both counsel and witness, he becomes more easily impeachable for interest and thus may be a less effective witness. Conversely, the opposing counsel may be handicapped in challenging the credibility of the lawyer when the lawyer also appears as an advocate in the case. An advocate who becomes a witness is in the unseemly and ineffective position of arguing his own credibility. The roles of an advocate and of a witness are inconsistent; the function of an advocate is to advance or argue the cause of another while that of a witness is to state facts objectively.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16895-A of Debra M. Tunney, pursuant to 11 DCMR § 3103.2, for a variance from the minimum lot dimensions requirements under section 401, a variance from the lot occupancy requirements under section 403, a variance from the rear yard requirements under section 404, a variance from the open court requirements under section 406, a variance from the nonconforming structure provisions under section 2001.3, to allow an addition to a row structure in the R-4 District at premises 1513 Independence Avenue, S.E. (Square 1072-S, Lot 21).

Note: The Board amended the application to eliminate the need for a variance from the off-street parking requirements under subsection 2100.7.

HEARING DATE: July 16, 2002
DECISION DATE: July 16, 2002 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B, the Office of Planning (OP) and to owners of property within 200 feet of the site. The site of the application is located within the jurisdiction of ANC 6B. ANC 6B submitted a letter in support of the application. The OP submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance pursuant to 11 DCMR §§ 3103.2. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 401, 403, 404, 406, and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without

substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED**, subject to the following **CONDITION**:

1. The new roof line of the building shall be of a horizonal design, running parallel to the existing roof line.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: **4-0-1** (Geoffrey H. Griffis, Anne M. Renshaw, Curtis L. Etherly, Jr., and James H. Hannaham to approve, the NCPC designee not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

FINAL DATE OF ORDER: JUL 19 2002

PURSUANT TO 11 DCMR § 3125.6, THIS 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.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C.LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C.

CODE SECTION 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

APPLICATION TO CERTIFY A HISTORIC BUILDING FOR D.C. ZONING REGULATIONS

I hereby request certification that the following property is a historic landmark or a building or structure contributing to the character of a historic district in the D.C. Inventory of Historic Sites, for the purpose of D.C. Zoning Regulations. A photograph of the front of the building is attached.

Address: 3209 Highland Place, NW

Square: 2072 Lot: 30

PURPOSE OF REQUEST:

__X__ Waiver of Additional Off-Street Parking Spaces (Section 2100.5)

__X__ Waiver of Additional Off-Street Loading Spaces (Section 2200.5)

_____ Increase in Number of Sleeping Rooms in a Bed-and-Breakfast Facility (Section 203.8)

Anne H. Adams - for National Child Research Center — 202 663-8884

Applicant — Telephone

Shaw Pittman
2300 N Street, NW
Washington, DC 20037

Address

Anne H. Adams — 2/7/03

Signature — Date

HISTORIC PRESERVATION DIVISION USE ONLY

I hereby certify that this property is either a historic landmark or a building or structure contributing to the character of a historic district listed in the D.C. Inventory of Historic Sites.

[signature] — 2/7/03

State Historic Preservation Officer — Date

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16839 of Advisory Neighborhood Commission 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 7 staff, in a C-2-A District at premises 5511 – 14th Street, N.W. (Square 2800, Lot 9).[1]

HEARING DATE: March 26, 2002
DECISION DATES: June 4, 2002; July 2, 2002

DECISION AND ORDER

Advisory Neighborhood Commission (ANC) 4A filed an appeal with the Board of Zoning Adjustment on January 4, 2002, alleging that the Zoning Administrator erred in approving the issuance of Certificate of Occupancy Number 18366 dated August 31, 2001, to Metro Day Treatment Center, Inc., for a child/elderly development center for 30 persons, ages 22-85 years old, and 7 staff members, at 5507 – 14th Street, N.W. (Square 2800, Lot 10), in a C-2-A Zone District.

ANC 4A is represented in this appeal by ANC 4A07 Single-Member District Commissioner John J. Chagnon. Assistant Corporation Counsel Ra'ouf M. Abdullah represented the Zoning Administrator. Neither the owner of the subject property, Pamela Coleman, nor the lessee and facility operator, Metro Day Treatment Center, Inc., elected to participate in these proceedings.

The appellant argues first that given the ages of the individuals served, the facility is not a "child/elderly development center," a use permitted as a matter of right in the C-2 District; and, second, that the facility, which currently lacks parking spaces, does not comply with the zoning regulations requiring the provision of off-street parking spaces. After a public hearing, the Board denied the appeal, determining that the definition of the phrase "child/elderly development center" in 11 DCMR § 199.1 encompasses "similar programs and facilities"; and that Metro Day Treatment Center, which provides care and training for mentally retarded adults, qualifies as a "similar program and facility." The Board also concluded that the appellant had not met its burden of proving that the Zoning Administrator erred in determining that the property is entitled to a "parking credit" or

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

the grandfathering of three parking spaces, such that no additional spaces for the center (which, as a child/elderly development center, would otherwise require two spaces) are required.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Appeal and Notice of Public Hearing. By memoranda dated January 14 and 15, 2002, the Office of Zoning advised ANC 4A, the appellant; the Zoning Administrator, the appellee; the Office of the Corporation Counsel; Pamela Coleman, the owner of the property that is the subject of the appeal; Herman Broomfield, Metro Day Treatment Center, the lessee and operator of the facility that is the subject of the appeal; ANC 4C, a potentially affected ANC; the Ward 4 Councilmember; and the D.C. Office of Planning of the filing of the appeal.

The Office of Zoning scheduled a hearing on the appeal for March 26, 2002. Pursuant to 11 DCMR § 3113.14, the Office of Zoning on February 11, 2002, mailed ANC 4A and the Zoning Administrator notice of hearing. Ms. Coleman was copied on the Zoning Administrator's notice. Notice of hearing was also published in the *D.C. Register* on February 8, 2002, at 49 DCR 1088.

"Motion to Dismiss" Certificate of Occupancy. At the public hearing, the appellant requested the Board to "dismiss" the certificate of occupancy since the application for the certificate could not be found in Department of Consumer and Regulatory Affairs (DCRA) records. The regulations relating to an application form for a certificate of occupancy are found in the Construction Codes, 12A DCMR § 118.2. Under 12A DCMR § 122, any person aggrieved by DCRA's interpretation of the Construction Codes may appeal to DCRA. Since the Board's jurisdiction in an appeal is limited to determining whether there is an error in the decision of an administrative official in carrying out or enforcing the Zoning Regulations, Title 11 DCMR, the Board denied the motion. *See* § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code § 6-641.07(g)(1) (2001)).

Appellant's Case. In its report dated March 25, 2002, ANC 4A identified the following issues and concerns: (1) the Zoning Administrator failed to follow the Board's order in BZA Appeal No. 16066; (2) the Zoning Administrator erred in issuing a certificate of occupancy for an elderly development center when he had specific information that the operator did not operate as an elderly development center; (3) the Zoning Administrator erred in approving the issuance of a certificate of occupancy as an elderly development center, since the facility provides services to persons who are not elderly; (4) the Zoning Administrator failed to calculate the required parking spaces for the facility, with the site approved on the basis of no change in use at the site; (5) the Zoning Administrator failed to require off-street parking; (6) the Zoning Administrator failed to require that the

subject site be properly inspected for change in use from general office use; and (7) the Zoning Administrator failed to require proper inspections for the site's conversion from office and warehouse use to a new use that would require fire sprinkler systems. ANC 4A requested the Board to reverse the Zoning Administrator's decision to approve the issuance of Certificate of Occupancy No. 18366.

ANC 4A argued that a day treatment center does not fall within the use category "child/elderly development center," and that by approving the center as a matter-of-right use, the Zoning Administrator was creating law. The ANC argued that as an undefined use, the facility would require one parking space for every 600 square feet. The ANC also argued that Zoning Administrator's determination that a certain number of parking spaces were grandfathered was not based on sufficient information; specifically, the extent to which the building was constructed after the effective date of the 1958 Zoning Regulations. The ANC asserted that at best, one parking space could be considered grandfathered.

The appellant's case included testimony and arguments from ANC Commissioner John J. Chagnon, as well as testimony from Ana Escobar, Mr. Chagnon's wife and neighborhood resident, and Jason Washington, from Councilmember Adrian Fenty's staff.

Zoning Administrator's Case. Toye Bello, Acting Zoning Administrator, testified on behalf of the Office of the Zoning Administrator. He stated that based on the nature of its operations and traffic and parking impacts, Metro Day Treatment Center was properly categorized for purposes of zoning as a child/elderly development center. He based the parking space requirement on the child/elderly development center use category, and provided the Board with copies of DCRA's records relating to prior use of the property to substantiate his determination that the property was entitled to a parking credit of three spaces.

Closing of the Record. The record closed at the conclusion of the public hearing on March 26, 2002, with the exception of the following materials specifically requested by the Board from the Zoning Administrator: (1) Mr. Bello's resume; (2) a copy of the definition of the word "elderly" from *Webster's Dictionary*; (3) copies of the Notices of Infraction issued to the facility operator for alleged zoning violations; and (4) copies of previous certificates of occupancy issued for the subject property or a statement that would substantiate the Zoning Administrator's verification of the previous and/or predominant use of the site. The Zoning Administrator filed the requested materials on May 13, 2002. Also, the Board provided the appellant the opportunity to supplement the record with extracts from the records in BZA Appeal Nos. 16066 and 16752, related appeals;[2] however, the appellant did not file any materials. The Board, therefore, has not incorporated any documents from Appeal Nos. 16066 and 16752 into the record of this

[2] These appeals are discussed below in the Findings of Fact, under "Pertinent Zoning History of the Property."

appeal, other than the copies of documents already filed with the Board prior to the public hearing.

Decision Meeting. At the conclusion of the public hearing, the Board scheduled a decision meeting for June 4, 2002. At the appellant's request and with the appellee's concurrence, the Board postponed its decision meeting to July 9, 2002. On July 9, the Board, voting 3 – 0 – 2, with two members not voting, not having heard the case, denied the appeal.

FINDINGS OF FACT

Pertinent Zoning History of the Property

1. The property that is the subject of this appeal consists of the first and second floors of the building at 5507 – 14th Street, N.W. (Square 2800, Lot 10), located in a C-2-A District.

2. A portion of the building was erected before May 12, 1958, the date the current Zoning Regulations became effective. Neither party provided definitive evidence regarding the size or use of the building prior to May 12, 1958.

3. The oldest record provided to the Board is a copy of Certificate of Occupancy No. B-79833, dated February 7, 1972, for the first floor and lot at 5507 – 14th Street, N.W. (Square 2800, Lot 8), for a "used car lot and display – no junk – no repairing." The application for this certificate indicates that the property was previously used as a gasoline station.

4. On May 5, 1995, the Zoning Administrator approved the issuance of Certificate of Occupancy No. B171610 to Marvin Stein, then owner of the subject property, on behalf of Psychological Development Associates, to allow use of the property as a "day treatment program." The Zoning Administrator had approved the use as general office use.

5. John J. Chagnon, on behalf of FZC Corporation, appealed the Zoning Administrator's decision with respect to Certificate of Occupancy No. B171610. On November 25, 1997, the Board, in BZA Appeal No. 16066, determined that the Zoning Administrator erred in approving the issuance of the certificate, finding that the day treatment program, which provided education and training for mentally challenged students, did not comport with general office use.

6. Mr. Stein then petitioned the District of Columbia Court of Appeals in Case No. 97-AA-2022 for review of the Board's order. Psychological Development Associates

subsequently ceased operations and vacated the premises. The Court therefore, on April 16, 1999, dismissed the petition as moot and vacated the Board's order in BZA Appeal No. 16066. The Court remanded the case to the Board, with instructions to take appropriate action in compliance with the Court's order. On November 29, 2001, the Board dismissed BZA Appeal No. 16066 as moot, since the recipient of the disputed certificate of occupancy, Psychological Development Associates, Inc., had long since ceased operations and vacated the premises.

7. Meanwhile, on October 15, 1999, the zoning regulations relating to "child/elderly development centers" became effective. As a result, 11 DCMR § 721.1 permits use as a child/elderly development center in the C-2 District as a matter of right. *See* 46 DCR 8284, 8288 (1999). The regulations define the phrase "child/elderly development center" in 11 DCMR § 199.1, 46 DCR at 8286.

8. On May 7, 2001, DCRA issued Metro Day Treatment Center, Inc., Certificate of Occupancy No. 190720, allowing use of the first and second floors of the premises at 5511 – 14th Street, N.W. (Square 2800, Lot 9), for purposes of a "day program for mentally retarded persons, adult development, not sexually oriented."

9. ANC 4A appealed the issuance of Certificate of Occupancy No. 190720 to the Board in BZA Appeal No. 16752. On August 31, 2001, DCRA issued Metro Day Treatment Center Certificate of Occupancy No. 18366 to replace Certificate of Occupancy No. 190720. When DCRA issued Certificate No. 18366, Certificate of Occupancy No. 190720 became void by virtue of its own terms. In its final order dated December 21, 2001, the Board therefore dismissed Appeal No. 16752 as moot. At its public decision meeting on August 6, 2002, the Board denied the Appellant's motion to reconsider the dismissal.

10. On January 4, 2002, in the instant case, BZA Appeal No. 16839, ANC 4A appealed the issuance of Certificate of Occupancy No. 18366.

Certificate of Occupancy No. 18366

11. Certificate of Occupancy No. 18366 permits Metro Day Treatment Center to use 7,552 square feet on the first and second floors of 5507 – 14th Street, N.W., as a "child development center." It identifies both the previous use and the approved use as a "child development center," which is further described on the certificate as a "child/elderly development center / 30 persons / ages 22-85 years old and 7 staff members."

12. The Zoning Administrator testified that in reviewing applications involving uses that are not specifically listed in the Zoning Regulations, the Office of the Zoning Administrator applies a concept called "like use." That is, the Zoning Administrator

applies "standards of compatibility and likeness to determine use category." Tr. at 277 (Mar. 26, 2002).

13. While the subject facility is designated as a "day treatment program" for purposes of Medicaid and Medicare, the Zoning Administrator categorized the facility as a "child/elderly development center" for purposes of zoning.

14. Metro Day Treatment Center provides care and training for mentally retarded adults.

15. Most of the clients served by the facility are well over age 40 and severely physically handicapped. They are unable to drive themselves to the facility.

16. The Zoning Regulations do not define the word "elderly." In its Notice of Final Rulemaking relating to child/elderly development centers, the Zoning Commission specifically declined to adopt a definition of the word "elderly." *See* 46 DCR 8284, 8285 (1999).

17. *Webster's Third New International Dictionary* (1986) defines the word "elderly" as "somewhat old: rather advanced in years: past middle age" and "of, relating to, or characteristic of one past the prime of life."[3]

18. The Zoning Administrator testified that he made a judgment call, based on the dictionary definition of the word "elderly" and the fact that the Zoning Commission had for some reason refused to define the elderly by age, that the Metro Day Treatment Center use is most like the use category, "child/elderly development center."

19. The Zoning Administrator testified that he found the day treatment center to be a facility similar to a child/elderly development center in that it provides care and services to individuals who typically do not drive. He stated that Metro Day Treatment Center's operations would therefore be comparable to a child/elderly development center in terms of traffic and parking impacts.

20. The Board finds that the use in question by Metro Day Treatment Center is similar to the programs and facilities specifically identified in the definition of the phrase "child/elderly development center" in § 199.1, both as to the nature of its operations in providing care and training for a segment of the population that typically does not drive and the likely impacts of its operations, particularly with regard to traffic and parking.

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[3] The Zoning Regulations provide in 11 DCMR § 199.2(g) that words not specifically defined in § 199 shall have the meanings given in *Webster's Unabridged Dictionary*.

The Parking Space Requirements

21. Since the Board has determined that the Metro Day Treatment Center is appropriately categorized for purposes of zoning as a child/elderly development center, the Board also concludes that its parking requirement is based upon the child/elderly development center use category. As noted by the Zoning Administrator, basing the parking space requirement on number of employees and staff rather than gross floor area is appropriate, given that none of the clients served by the center drive.

22. Under § 2101.1, a child/elderly development center requires one parking space for every four staff. With seven staff as permitted by the certificate of occupancy, the Board concludes the facility requires two parking spaces.[4]

23. The Zoning Administrator determined that the premises are entitled to a credit of three parking spaces. The Zoning Administrator based his calculations on DCRA's records which indicate that the property had a history of retail use, using 7,600 square feet as the approximate gross floor area attributable to retail use.

24. While the appellant argued that the parking credit would be less if the building had been used for office purposes and if the amount of gross floor area used for office purposes before May 12, 1958, was less than 7,600 square feet, the appellant did not introduce any reliable evidence regarding the use of the building before May 12, 1958.

25. The Board finds that while records provided by DCRA relating to this property do not extend back to May 12, 1958, the Zoning Administrator's parking calculations are not unreasonable given the records that do exist.

26. On October 31, 2001, DCRA issued Metro Day Treatment Center Building Permit No. B439818 to "divide existing space to create lounge and parking for three vehicles" per submitted plans.

27. As of the date of the hearing on this appeal, the three parking spaces that were to be provided on the site pursuant to Building Permit No. B439818 were not yet accessible due to a barrier at the Colorado Avenue entrance.

CONCLUSIONS OF LAW AND OPINION

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[4] The Zoning Administrator testified that with 11 employees, the provision of the three spaces would meet the parking requirement for the category of use, child/elderly development center. However, the certificate of occupancy limits the facility to seven employees.

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Code § 6-641.07(f) and (g)(1) (2001)), to hear and decide appeals where it is alleged by an appellant that there is error in any decision by an administrative officer in the carrying out or enforcement of the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR §§ 3100.2, 3101.5, and 3200.2. The notice requirements of § 3112 for the public hearing on the appeal have been met.

The Child/Elderly Development Center Use

The subject property is located in the C-2-A District, the medium-density Community Business Center District. As described in 11 DCMR §§ 720.2 – 720.5, the C-2-A District is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the city outside of the central core. Areas zoned C-2-A are located in low and medium-density residential areas with access to main highways or rapid transit stops, and include employment centers, shopping centers, and medium bulk mixed-use centers. Matter-of-right uses in the C-2 District include dwellings, certain community-based residential facilities, various types of retail and service establishments, office uses, colleges and universities, private schools, hotels and inns, assembly halls, auditoriums, public halls, and theaters. *See* 11 DCMR § 721.

A "child/elderly development center" as defined in § 199.1 is also permitted in the C-2 District as a matter of right pursuant to § 721.1, which incorporates by reference any use permitted as a matter of right in the C-1 District under § 701. Subsection 701.2 in turn incorporates by reference any use permitted as a matter of right in the SP District under § 501, which includes under § 501.1(g), use as a child/elderly development center. *See* 46 DCR 8284, 8288 (1999).

The Zoning Regulations define the phrase "child/elderly development center" in 11 DCMR § 199.1 as:

> a building or part of a building, other than a child development home or elderly day care home, used for the licensed care, education, counseling, or training of individuals fifteen (15) years of age or less and/or for care of elderly individuals, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than 24 hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, *and similar programs and facilities*. A child/elderly development center includes the following accessory uses: counseling, education, training and health and social services for the parents or principal guardians of children attending the center.

46 DCR 8284, 8286 (1999) (emphasis added).

The Metro Day Treatment Center offers care and training for mentally retarded adults. While some of the adults are "elderly" as that word is defined in the dictionary, others are young and middle-aged adults. Notwithstanding the age of the clients served, the Board concludes that Metro Day Treatment Center constitutes a "similar program and facility" to the programs and facilities specifically identified as encompassed within the definition of "child/elderly development center."

The Zoning Regulations cannot realistically identify every potential use of property. A day treatment center for mentally retarded adults is similar to the programs and facilities encompassed within the definition of a "child/elderly development center," both with respect to the nature of the use – the care, education, counseling, training, and other social services provided – and with respect to impacts of the use on the public. The Board in particular credits the testimony of the Zoning Administrator that the traffic and parking impacts of a day treatment center and a child or elderly development center would be similar, in that the clients served by these facilities typically do not drive themselves to the facility and park, but rather are dropped off and picked up. Accordingly, the Board concludes that the Zoning Administrator did not err in approving the issuance of a certificate of occupancy to Metro Day Treatment Center for use as a child/elderly development center.

The Parking Space Requirements

Since Metro Day Treatment Center is a child/elderly development center, the schedule of requirements for parking spaces in 11 DCMR § 2101.1 (without taking into account any "parking credits" or "grandfathering") requires the provision of two parking spaces. To the extent that Metro Day Treatment Center is entitled to a parking credit, the credit derives from the long-standing administrative interpretation of §§ 2100.1 and 2100.4. Subsection 2100.4 provides that if the use of a building is changed to another use that requires more parking spaces than were required for the use existing immediately prior to the change, parking spaces shall be provided for the additional requirement in the amount necessary to conform to the schedule of required parking spaces in § 2101.1. Subsection 2100.1 requires that all buildings erected on or after May 12, 1958, be provided with the number of parking spaces specified in § 2101.1. Read together, these subsections provide a "parking credit," the amount of which is based upon the use existing immediately prior to May 12, 1958.

The record is not clear as to the use existing before May 12, 1958. The appellant relies upon parking space calculations for general office use. However, the oldest records that DCRA was able to provide indicate that in 1972, DCRA issued a certificate of occupancy

for use as a "used car lot and display." None of the records indicate office use prior to May 12, 1958. The Zoning Administrator testified that based on the history of retail use, the property would be entitled to a parking credit of three spaces. While the history of use and the square footage involved is not as complete as might be desired, the Board concludes that that the appellant has not met its burden of proving that the Zoning Administrator erred in approving the issuance of the certificate of occupancy without first requiring the provision of additional parking spaces. However, even if the Zoning Administrator erred in calculating a parking credit of three spaces, Metro Day Center's subsequent provision of three parking spaces will more than satisfy its obligation under § 2101.1 to provide two spaces. The reversal of the Zoning Administrator's decision under such circumstances is not warranted.

Finally, since the Court of Appeals vacated the Board's decision in BZA Appeal No. 16066, rendering it of no legal effect, the Zoning Administrator did not err in failing to follow the Board's decision that a day treatment center use should not be classified for purposes of zoning as general office use. To the extent the appellant has raised concerns about the inspection of the facility and its fire sprinkler system, those concerns, which involve the interpretation and application of the Construction Codes, Title 12A DCMR, fall within DCRA's purview. Any appeal of these issues must be addressed to DCRA pursuant to 12A DCMR § 122.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **DENIED** and that the decision of the Zoning Administrator to approve the issuance of Certificate of Occupancy No. 18366 is **AFFIRMED.**

VOTE: 3 - 0 - 2 (Geoffrey H. Griffis, John G. Parsons, and Anne M. Renshaw, to affirm; Curtis L. Etherly, Jr., and David A. Zaidain, not voting, not having heard the case)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: OCT 15 2002

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Appeal No. 16839

As Director of the Office of Zoning, I hereby certify and attest that on OCT 15 2002, a copy of the Decision and Order 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 this matter and that is listed below:

James H. Jones, Chairman
Advisory Neighborhood Commission 4A
7600 Georgia Avenue, N.W., Suite 404
Washington, D.C. 20012

John J. Chagnon, Commissioner
ANC Single-Member District 4A07
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Washington, D.C. 20011

Charlotte W. Parker, Deputy Corporation Counsel
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Pamela Coleman
4200 Wisconsin Avenue, N.W.
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Herman Broomfield
Metro Day Treatment Center, Inc.
5507 – 14th Street, N.W.
Washington, D.C. 20060

Honorable Adrian M. Fenty
Councilmember Ward 4
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Room 506
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William Kelly, Zoning Administrator
Building and Land Regulation Administration
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Alan Bergstein, Section Chief
Land Use and Public Works Section
Commercial Division
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Washington, D.C. 20001

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

Form 11-2-1
5-1-58

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF LICENSES AND INSPECTIONS
ZONING DIVISION

DATE FILED
November 4, 1958.

CERTIFICATE FOR REGISTRATION OF NONCONFORMING USE

File one copy with the Zoning Division, District Building, 14th & E Streets, N. W., Washington, D. C. File duplicate if you desire a receipted copy.

Answer all questions, inserting "none" where appropriate. Use ink or typewriter.

SEE REVERSE SIDE FOR DETAILED INFORMATION AND INSTRUCTIONS.

TO BE FILLED IN BY ZONING DIVISION
APPROVED and ACCEPTED

DESCRIPTION OF PROPERTY

1. STREET or ALLEY Address	2. Width of Lot	3. Depth of Lot	LOT	SQUARE
3209 Highland Place, N.W.	Not Rectangular If not a rectangular lot see instructions on back			
4. Nonconforming Use of Property	**5. Is there a permanent Building on Property**		**LOT AREA**	**ZONE CLASSIFICATION**
Nursery School and Kindergarten	check Yes [X] No [ ]			

6. Name of Operator of Nonconforming Use	7. Name of OWNER of Building
National Child Research Center	National Child Research Center
Address of Operator 3209 Highland Place, N.W.	Address of Owner 3209 Highland Place, N.W.
Telephone No. EM 3-5948	Telephone No. EM 3-5948

8. TRADE NAME of Business	9. Certificate of Occupancy NUMBER	10. DATE Certificate of Occupancy Issued
National Child Research Center	30302	July 1, 1930

11. Floors Used for the Nonconforming Use	12. How many Stories in Building	13. How many Dwelling Units in Building	14. Material of Building
Two (2)	Three (3)	None (0)	Masonary [X] Frame [ ] Others [ ]

15. Is Roof construction Fireproof	16. List floors in Building which are Fireproof	17. Allowable Live Load	18. Has Building been condemned
Yes [X] Believe So No [ ]	All List floors which are not Fireproof None	First Floor: Not Known Upper Floors: Not Known Roof:	check Yes [ ] No [X]

The facts on this form are correct to the best of my knowledge. National Child Research Center

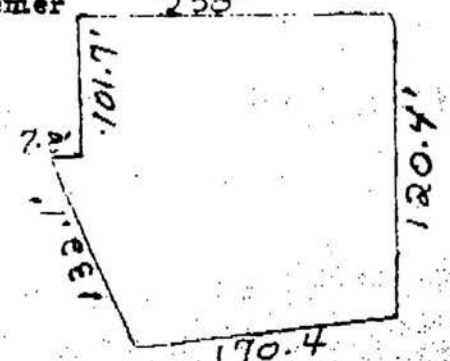
By _____ Pres.
(Signature of Applicant)

Subscribed and duly sworn to before me by the above named applicant, this day of 19 , at Washington, D. C.

_____
(Notary Public)

My Commission expires 19

19. Diagram or Description of Lot



November 4, 1958

Government of the District of Columbia
Department of Licenses and Inspection
Zoning Division
14th and E Streets, N.W.
Washington, D. C.

Gentlemen:

Enclosed herewith please find Certificate for Registration of Nonconforming Use, being submitted on behalf of National Child Research Center.

If any further information is desired, please communicate with the undersigned.

Respectfully yours,

Richard K. Lyon
President

RKL:b
Enclosure
bcc: Marie Crowley

B. L. S. No. 2437gg

Budget Bureau No. 44-S810.
Approval expires June 30, 1959.

A Survey of SCIENTIFIC RESEARCH AND DEVELOPMENT BY NONPROFIT ORGANIZATIONS

Conducted for the

NATIONAL SCIENCE FOUNDATION

By the

U. S. DEPARTMENT OF LABOR

Bureau of Labor Statistics

DIRECTOR
NATIONAL CHILD RESEARCH CENTER
3209 HIGHLAND PLACE N. W.
WASHINGTON D. C.
04 6 048

Change address if incorrect

Your reply will be held in STRICT CONFIDENCE

It is important that we obtain a reply from your organization even if it does not perform or finance research or development. In such case, please answer only the questions on this page.

Please include information for your organization's activities abroad as well as in the United States, and for its non-incorporated branches, divisions, and departments. If your organization is a professional or technical society, please include regional, State, and local affiliates provided data on all items can be furnished for them; otherwise, report for your organization only. Please indicate on page 4 whether this reply includes data for such affiliates.

Reasonable estimates will be satisfactory. Write "None" where appropriate, or "Not available" if such is the case, rather than leave a blank space. Please give figures for requested calendar year or for fiscal year ending during requested calendar year.

Mail completed questionnaire to:
COMMISSIONER OF LABOR STATISTICS,
U. S. DEPARTMENT OF LABOR,
Washington 25, D. C.

Terms in Heavy Capitals are Defined on Pages 5 and 6

1. Please give total number of paid employees of REPORTING ORGANIZATION in all activities and occupations as of January 1958. (Exclude outside consultants.) Total 17; FULL-TIME 14; PART-TIME 3

2. Of the total number of paid employees of reporting organization as of January 1958 (Item 1), how many were employed as PHYSICAL SCIENTISTS, LIFE SCIENTISTS, OR ENGINEERS?

	Number Employed	
	FULL-TIME	PART-TIME
PHYSICAL SCIENTISTS, LIFE SCIENTISTS, AND ENGINEERS, total:		
A. Chemists		
B. Physicists		
C. Metallurgists		
D. MATHEMATICIANS		
E. EARTH SCIENTISTS		
F. Other PHYSICAL SCIENTISTS (please specify):		
G. Engineers (all types)		
H. AGRICULTURAL SCIENTISTS		
I. MEDICAL SCIENTISTS		
J. BIOLOGICAL SCIENTISTS		
K. ADMINISTRATORS		

3. Of the total number of paid employees of reporting organization as of January 1958 (Item 1), how many were employed as TECHNICIANS? Total ____; FULL-TIME ____; PART-TIME ____

4. Please give TOTAL EXPENDITURES of reporting organization in 1957. $____

5. Did reporting organization perform any RESEARCH or DEVELOPMENT in 1957? Yes ☐ No ☒

6. Did reporting organization in 1957 finance any RESEARCH or DEVELOPMENT performed by others? Yes ☐ No ☒

PLEASE GO TO NEXT PAGE IF ANSWER TO EITHER ITEM 5 OR 6 IS YES
COMPLETE ONLY THIS PAGE IF ANSWER TO BOTH ITEMS 5 AND 6 IS NO

Is reporting organization a subsidiary of another organization? Yes ☐ No ☒
If Yes, please give name and principal business of parent organization ____

Name and title of official submitting return Doris E. Hawkins
Consultant - Director

ZONING REGULATIONS

of the

DISTRICT OF COLUMBIA

ADOPTED BY THE ZONING COMMISSION
UNDER AND BY VIRTUE OF THE AUTHORITY CONFERRED
UPON IT BY AN ACT OF CONGRESS
APPROVED JUNE 20, 1938, AS AMENDED

EFFECTIVE MAY 12, 1958

WASHINGTON, D. C.

For sale by the
Department of Licenses and Inspections, District Building
Per copy, $1.50.

CHAPTER 3

USE, HEIGHT, AREA, AND DENSITY REGULATIONS FOR RESIDENCE DISTRICTS

ARTICLE 31

USE REGULATIONS FOR RESIDENCE DISTRICTS

Section 3101—R-1 Districts (One-Family Detached Dwellings) (Including R-1-A and R-1-B Districts)

3101.1 The R-1 District is designed to protect quiet residential areas now developed with *one-family detached dwellings* and adjoining vacant areas likely to be developed for such purposes. The regulations are designed to stabilize such areas and to promote a suitable environment for family life. For that reason only a few additional and compatible uses are permitted. The *district* is subdivided by different area requirements into R-1-A and R-1-B Districts, providing for *districts* of low and high density, respectively.

3101.2 Except as provided in Chapter 7 of these regulations, in any R-1 District no *building* or premises shall be used and no *building* shall be erected or altered which is arranged, intended, or designed to be used except for one or more of the uses listed in the following paragraphs.

3101.3 The following uses are permitted as a matter of right:

3101.31 *One-family detached dwelling.*

3101.32 Church or other place of worship, but not including rescue mission or temporary revival tents.

3101.33 Parsonage, vicarage, rectory, or Sunday school *building.*

3101.34 Transportation right-of-way or underground conduit or pipeline.

3101.35 Temporary *building* for the construction industry which is incidental to erection of *buildings* or other *structures* permitted by this Section.

3101.36 Farm or truck garden.

3101.37 Temporary use of premises by fairs, circuses, or carnivals, upon compliance with the Police Regulations of the District of Columbia.

3101.38 *Private garage* designed to house no more than two motor vehicles and not exceeding 450 square feet in area, subject to the special provisions of Article 74 of these regulations.

3101.39 *Private garage* on an *alley lot* so recorded on the records of the Surveyor, District of Columbia, or recorded on the records of the Finance Office, District of Columbia,* on or before November 1, 1957, subject to the special provisions of Article 74 of these regulations.

3101.310 *Embassy.*

3101.4 The following uses are permitted if approved by the Board of Zoning Adjustment subject to the conditions specified in Section 8207 and below in each case:

3101.41 A private school in the form of a kindergarten or serving a pre-school group, provided, that:

(a) It will have no articles of commerce for sale;

(b) It is so located and the activities to be conducted therein will be such that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or other objectionable conditions;

(c) The use will be reasonably necessary or convenient to the neighborhood which it is proposed to serve. The enrollment at such school will be limited primarily to children residing in that neighborhood; and,

(d) There shall be provided on the same *lot* with such use not less than 100 square feet of play area for each child.

3101.42 Other private school, but not including a trade school, and residences for teachers and staff of a private school, provided that:

(a) It is so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions;

*Office of the Assessor reorganized as the Property Tax Division, Finance Office, District of Columbia, per Organization Order No. 21, dated December 12, 1957.

7201.12 No certificate of occupancy shall be issued for the use of a *structure* erected on or after the effective date of these regulations unless the required *parking spaces* shall have been provided in accordance with the parking plan included in the approved building permit.

7201.2 When the use of a *structure* erected on or after the effective date of these regulations is changed to another use which requires more *parking spaces* than required for the original use, additional *parking spaces* shall be provided in the amount necessary to conform to the requirements of Section 7202. Amended 12/8/58

7201.3 When the intensity of use of a *structure* existing before the effective date of these regulations is increased by an addition or additions of employees, *dwelling units*, *gross floor area*, seating capacity, or other unit of measurement specified in Section 7202, *parking spaces* shall be provided for such addition or additions, provided:

7201.31 Except as provided in subparagraph 7201.32, *parking spaces* shall not be required for the addition or additions unless such addition or additions increase the intensity of use of such *structure* by more than 25% of the aggregate;

7201.32 At least one *parking space* shall be available on the *lot* for the use of occupants of such *structure;*

7201.33 *Parking spaces* for such addition or additions need not exceed the amount of *parking spaces* which would be required for the entire *structure* as proposed if constructed new; and,

7201.34 The determination of the increase of intensity of use shall be based on the total increase in intensity of use such *structure* undergoes on or after the effective date of these regulations whether such total increase occurs at one time or in successive stages.

Section 7202—Schedule of Requirements for Parking Spaces

7202.1 On and after the effective date of these regulations all *structures* shall be provided with *parking spaces* as specified in the following table:

Uses	Amount of *Parking Space* Required
RESIDENTIAL USES.	
One-family dwelling:	
All *districts*	One for each *dwelling unit*
Two-family dwelling or *flat*, *apartment house*, *tenement house*, or *multiple dwelling:*	
R-5-A, C-1	One for each *dwelling unit*
R-5-B, C-2, C-3-A	One for each two *dwelling units*
R-4, R-5-C	One for each three *dwelling units*
R-5-D, SP, C-3-B, C-4	One for each four *dwelling units*
Rooming house:	
All *districts*	One for each five guest bedrooms
Motel:	
All *districts*	One for each sleeping room or suite
Hotel:	
R-5-B, R-5-C, C-1, C-2, C-3-A	One for each two sleeping rooms or suites
R-5-D, SP, C-3-B	One for each four sleeping rooms or suites
C-4	No requirement
Dormitory, sorority or fraternity house not a part of a campus development:	
All *districts*	One for each five beds
SCHOOLS	
Nursery through Junior High school:	
All *districts*	Two for each three teachers and other employees except custodial personnel
High school and accessory uses:	
All *districts*	Two for each three teachers, plus one for each 20 classroom seats OR one for each ten auditorium seats whichever is greater

WILKES, ARTIS, HEDRICK & LANE
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1666 K STREET, N. W.
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BETHESDA, MARYLAND
FAIRFAX, VIRGINIA
GREENBELT, MARYLAND

MAUREEN ELLEN DWYER
(202) 457-7860

April 1, 1997

Ms. Gladys Hicks
Acting Zoning Administrator
614 H Street, N.W.
Room 333
Washington, D.C. 20001

Re: Private Club Operated by Marquette University
502 East Capitol Street, N.E.

Dear Ms. Hicks:

This letter is to confirm that based upon your review of the plans, use of the above referenced property by Marquette University as a residence and as a private club fully complies with the parking requirements of the zoning regulations.

Pursuant to Section 2101 of the Zoning Regulations, three parking spaces are required: one to serve the private residence for Father O'Brien located on the upper three floors of the property and two for the private club use which is located on the basement level. The subject property provides one garage parking space for Father O'Brien's use and two parking spaces in the driveway for the private club use. The driveway is approximately 50 feet in length and 9 feet wide and provides ample room for two 9' by 19' tandem spaces. These spaces meet the size, width and access requirements of the Zoning Regulations and fully comply with the zoning requirements. (See the attached Exhibit A.)

As you know, this issue was reviewed in detail by the appropriate officials at the Department of Consumer and Regulatory Affairs in connection with the processing of the building permits and certificate of occupancy. The city determined at that time that all requirements had been met and thus the building permits and certificates of occupancy were correctly issued.

If the above conforms with your understanding of the facts, please indicate your agreement that the property complies with the parking requirements for the zoning regulations by signing in the space provided below.

Thank you for your attention to this matter.

Sincerely yours,

Maureen Dwyer

Maureen Ellen Dwyer

MED:lm/33333

APPROVED:

Gladys Hicks
Acting Zoning Administrator
Date: 4/11/97