

DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT  
441 4<sup>th</sup> Street, N.W.  
Washington, D.C. 20001

Appeal by Arboretum Neighborhood Association

BZA Appeal No. 20026

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’  
MOTION TO DISMISS FOR LACK OF JURISDICTION**

The D.C. Department of Consumer and Regulatory Affairs (DCRA) respectfully requests that the Board of Zoning Adjustment (“Board”), dismiss the Appeal for lack of jurisdiction, and in support, states as follows:

Appellant, Arboretum Neighborhood Association (“Arboretum”), claims that the Zoning Administrator’s issuance of the January 25, 2017<sup>1</sup> Zoning Certification (“Zoning Certificate”) in connection with a property located at 3400 New York Avenue, N.E. (“property”) violated the Appellant’s due process rights. The Arboretum does not dispute the contents, analysis or judgment of the Zoning Administrator’s Certification, nor does the Arboretum cite to any violation of the Zoning Regulations. In short, the Appellant claims that the Zoning Administrator’s issuance of the Zoning Certification violates their due process rights because Appellant was not given an opportunity to “challenge” the issuance of the Zoning Certification.

However, this Appeal must be dismissed because: 1) the Appeal fails to identify any substantive Zoning Regulation for the Board to adjudicate; and 2) the nature of the Appeal itself does not fall within the Board’s enumerated powers.

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<sup>1</sup> BZA Appeal No. 20026 Exhibit 2-Zoning Certification. Appellant submitted a Zoning Certification dated January 27, 2017; However, DCRA was only able to confirm a Zoning Certification dated January 25, 2017. Although the content therein is substantially the same, all references herein refer to the January 25, 2017 Zoning Certification.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On or around March 15, 2019, Appellant appealed the Office of the Zoning Administrator’s issuance of a January 25, 2017 Zoning Certification alleging that the issuance violated the due process rights of the Advisory Neighborhood Commission and circumvents the Board of Zoning Adjustment’s jurisdiction.<sup>2</sup> Appellant asserts that the Federal Bureau of Prisons (“BOP”) awarded a five-year contract to CORE D.C., LLC for the construction of a Residential Re-Entry Management Center (“RRMC”) at 3400 New York Avenue, N.E.<sup>3</sup> According to Appellant’s appeal, CORE D.C., LLC “was required to establish to the BOP that it secured local government ‘approval’ of its zoning for the intended location.”<sup>4</sup> Appellant also asserts in its appeal that CORE D.C., LLC “secured two (2) distinct Zoning Certifications from the D.C. Zoning Administrator.”<sup>5</sup>

On January 25, 2017, the Zoning Administrator issued a Zoning Certification stating that that the proposed use of a Community Based Institutional Facility (adult rehabilitation center) at 3400 New York Avenue, N.E., located in a PDR-1 zone, complies with the D.C. Zoning Regulations. (DCRA Exhibit 1- Zoning Certificate, dated January 25, 2017). Pursuant to 11-Y DCMR § 202.1(h):

A Community-Based Institutional Facility (“CBIF”) is defined as:

- (1) A use providing court-ordered monitored care to individuals who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living; have been assigned to the facility; or are being detained by the government, other than as a condition of probation;
- (2) Examples include, but are not limited to: **adult rehabilitation home**, youth rehabilitation home, or detention or correctional facilities that do not fall within the large-scale government use category; and

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<sup>2</sup> BZA Appeal No. 20026 Exhibit 3- BZA Appeal Statement at pages 1-2.

<sup>3</sup> BZA Appeal No. 20026 Exhibit 3- BZA Appeal Statement at page 2, paragraph 3.

<sup>4</sup> BZA Appeal No. 20026 Exhibit 3- BZA Appeal Statement at page 2, paragraph 4.

<sup>5</sup> BZA Appeal No. 20026 Exhibit 3- BZA Appeal Statement at page 2, paragraph 4.

(3) Exceptions: This use category does not include uses which more typically would fall within the emergency shelter or large-scale government use category. This use category also does not include residential or medical care uses that were previously defined as community residence facilities, health care facilities, substance abuser’s homes, or youth residential care homes; (emphasis added.)

The January 25, 2017 Zoning Certification asserted that a community based institutional facility may be built, as a matter of right, in this specific PDR-1 zone. The Zoning Certification also states the following: “Certificate of the proposed use upon the indicated date DOES NOT imply future approval of the building plans and/or certificates of occupancy.” (DCRA Exhibit 1-Zoning Certificate)(emphasis in original.)) The disclaimer on the Zoning Certification confirms that the Zoning Regulations permit a proposed use in a specific zone and that the construction is subject to approved plans.

As of the date of this writing, DCRA is unable to locate any pending applications for a building permit to construct a community based institutional facility at 3400 New York Avenue, N.E.

## ARGUMENT

### **I. The Appeal Must Be Dismissed because the Board Lacks Jurisdiction to Adjudicate this Case.**

The Board is charged with interpreting District's zoning regulations. *District of Columbia Department of Public Works, Department of Consumer and Regulatory Affairs v. L.G. Industries, Inc. UDA Waste of D.C., Inc.*, 758 A.2d 950, 954 (D.C. 2000). Per D.C. Official Code § 6-641.07(g)(1)(4)) and Zoning Regulation 11-Y DCMR § 100.4, the Board has the following enumerated powers:

**(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Inspector of Buildings or the Mayor of the District of Columbia or any other administrative officer**

**or body in the carrying out or enforcement of any regulation adopted pursuant to this subchapter;**

(2) To hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions or map interpretations or for decisions upon other special questions upon which such Board is required or authorized by the regulations to pass;

(3) 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 subchapter 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;

(4) In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of this subchapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken. (emphasis added.)

Appellant is currently appealing the “D.C. Zoning Administrator’s unpublished January 27, 2017 Zoning certification and the process related thereto.”<sup>6</sup> Essentially, the Appellant requests that this Board review alleged violations of “due process,” which exceeds the scope of the Board’s authority, as it does not fall within any of the enumerated powers of the Board. The Board’s scope of review is limited to zoning regulations and review of errors “in any order, requirement, decision, determination, or refusal.” None of those are in this present Appeal. The Appellant fails to cite to any specific zoning regulation which the Zoning Administrator purportedly violated. Furthermore, the Appellant does not assert that the Zoning Administrator exceeded his authority in issuing the Zoning Certification. The Appellant neither argues nor suggests that the Zoning Administrator’s analysis was incorrect or erroneous on the date the

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<sup>6</sup> BZA Appeal No. 20026 Exhibit 3- BZA Appeal Statement at page 1.

January 2017 Zoning Certification was issued. Based on the foregoing, Appellant’s claim falls outside this Board’s purview and must be dismissed for lack of jurisdiction.

**CONCLUSION**

For the foregoing reasons, DCRA respectfully requests that the Board dismiss this appeal for lack of jurisdiction.

Respectfully submitted,

/s/ Esther Yong McGraw

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**CERTIFICATE OF SERVICE**

I certify that on this 9<sup>th</sup> day of October 2019 a copy of the foregoing was served via U.S. first class mail or electronic mail to:

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