BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA

ARBORETUM NEIGHBORHOOD ASSOCIATION	)	
	)	**BZA Appeal 20026 of Arboretum Neighborhood Association**
Appellant	)	
v.	)	
THE DISTRICT OF COLUMBIA	)	
Respondent.	)	

ARBORETUM NEIGHBORHOOD ASSOCIATION RESPONSE

INTRODUCTION

Comes now, Appellant, Arboretum Neighborhood Association ("Aboretum"), by counsel, and respectfully files the immediate Response to DCRA and the property owner's respective motion to dismiss on ground. Both argue that Arboretum's appeal is moot since there is no longer a contract nor an agreement for use of the subject site for the purpose of a 300 bed halfway house. Nevertheless, an application with a new address for the slated purpose would once implicate the zoning implicate matter of rights law. Arguments in support of Appellant's response are stated more fully below.

The District of Columbia is a municipality which acting through its Board of Zoning, implements certain zoning regulations which govern the location of various structures, buildings, and businesses in September 2016, the District promulgated revised zoning regulations which are particularly vague, ambiguous, and defective pertinent to critical definitions and terms that affect the location of a 300 person Halfway House in Zone PDR.

FACTUAL BACKGROUND

On November 1, 2018, the Federal Bureau of Prisons awarded a five (5) year contract to CORE DC, LLC for a 300 bed Residential Reentry Management Center ("RRMC"), commonly referred to as a Halfway House. *See Ex. 1. P*ursuant to its contract award, CORE DC and the Federal Bureau of Prisons ("BOP") expect to locate the RRMC to 3400 New York Avenue, N.E. *Id.* Prior to September, 2016, DC Zoning regulations clearly defined an RRMC (Halfway House) as a facility in which returning citizens would serve the final 3-6 months of their respective sentences under the BOP's jurisdiction. More specifically, DC Zoning regulations at 11 DCMR ¶ 99.1 then defined a Halfway House as a "community-based residential facility" and correspondingly, an "adult rehabilitation house" as follows:

> "A residential facility for persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. This definition includes, but is not limited to, facilities covered by the Community Residence Facilities Licensure Act of 1977, effective October 29, 1977 (D.C. Law 2-35; 24 DCR 4056) (repealed by District of Columbia Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48, as amended; D.C. Official Code §§ 44-5-1 to 44-509 (formerly codified at D.C. Code §§ 32-1301 to 32-1309 (1998 Repl. & 1999 Supp.))), and facilities formerly known as convalescent or nursing home, residential Halfway House or social service center, philanthropic or eleemosynary institution, and personal care home. If an establishment is a community-based residential facility as defined in this section, it shall not be deemed to constitute any other use permitted under the authority of these regulations. A community-based residential facility may include separate living quarters for resident supervisors and their families. All community-based residential facilities shall be included in one (1) or more of the following subcategories:
>
> (a) Adult rehabilitation home – a facility providing residential care for one (1) or more individuals sixteen (16) years of age or older who are charged by the United States Attorney with a felony offense, or any individual twenty-one (21) years of age or older, under pre-trial detention or sentenced court orders;"

Consistent therewith, on June 24, 2016, Mathew W. Le Grant, the District of Columbia's ("DC") Zoning Administrator, penned an opinion related to a proposed BOP Halfway House,

which the Contractor sought to locate at 475 School Street, S.W., (Zone c-3-c) as a matter of right. *See Ex. 2.* Mr. Le Grant's June 24, 2016 letter-decision predated the then anticipated newly enacted BZA regulations. *Id.* On August 22, 2016, the Southwest Business Improvement District appealed Mr. Le Grant's decision to the DC Zoning Commission, noting that applicable zoning regulations which contemplated a Community Based Residential Facility ("CBRF") did not adequately define the term "community based." It also challenged the Zoning Administration's failure to clearly define the phrase "large scale government use" pertinent to the RRMC and noted that his letter did not factor into consideration the anticipated changes in the revised regulations. *See Ex. 3*. The Contractor subsequently withdrew its proposal.

On or around September 6, 2016, the D.C. Zoning Commission revised applicable Zoning and Administrative Regulations, the short title being "Zoning Regulations of the District of Columbia." These new regulations referred to adult rehabilitation homes. Chapter 8 of the revised zoning regulations govern use permissions in the pertinent Zone, effectively called a Production, Distribution and Repair Zone ("PDR"), which are codified specifically at Section 800, General Provisions, and Section 801, Matter-of-Rights Uses (PDR). Section 801, reads in relevant part as follows: 801.1, the following use shall be permitted in a PDR zone as a matter-of-right, subject to applicable conditions: "(f) Community-based institutional facility." In so doing, the zoning regulations introduced new terms. Peculiarly, the term "Community-Based Institutions Facility" ("CBIF") includes a reference to the previously used term "Adult Rehabilitation Home" as follows:

> (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

(3) Exceptions: This use category does not include uses which more typically would fall within the emergency shelter or large-scale government use category.

Instructively, the Commission's revised zoning regulations omit over 250 definitions from its 34 pages including the previous widely used terms "Halfway House", "Community Based Residential Facility" and "Adult Rehabilitation Home", which were the precise definitions that were referenced in Mr. LeGrand's June 2016 letter. These same revised regulations reference and define many more relatively simple terms such as "Car Wash," "Car Sharing Space," "Inn," and "Yard."

On November 9, 2018, *The Washington Post* reported that the BOP awarded CORE DC, a newly-formed private company, a five (5) year, $60 million contract to open a Halfway House for 300 former inmates at 3400 New York Avenue in Northeast Washington, DC. *See* Ex. 1. Highly sensitive to CORE DC's actions, Delegate Norton noted the following about its contract: "Once it is a fait accompli, I'm not sure what anyone can do about it. You and I don't know much about it yet. That's a problem."

Absent any reference to the terms that previously defined Halfway Houses, affected communities are precluded from effectively challenging any proposed matter of right zoning halfway house related actions in Zone PDR which implicate these respective definitions.

ARGUMENT

The present ambiguities and want of clear definitions in the revised Zoning Regulations directly impede the neighboring residents' and the government's ability to properly interpret and enforce said regulations and also to protect their rights. No longer are there definitions for a "Community Based Residential Facility" or an "Adult Rehabilitation Home" in the revised

regulations. The absence of such definitions in render Sections 800 and 801 ambiguous and ineffectual. Affected citizens' such as Arboretum and the District of Columbia government from a clear understanding of their legal significance, and impedes Plaintiffs' ability to protect their rights. Hence, these revised regulations are overbroad and vague, constitutionally void.

The immediate case is exemplary. The vagueness and ambiguities in the attending regulations, and the peculiar removal of the terms "community based residential facility" and "adult rehabilitation home," notwithstanding the use of the latter term, directly any Mayoral (Zoning Agency) scrutiny of proposed halfway houses in the future as a matter of right in the PDR zone. Due to the vagueness of the revised zoning regulations, there is no clear and certain language defining 300 bed halfway houses that would give affected persons or Zoning authorities a reasonable opportunity to know what the law is or is not.

The Immediate Issue Is Not Moot and Should Not Be Dismissed.

The Appellant has demonstrated a valid procedural and technical quagmire in the existing zoning regulations. Chapter 3, Administration and Enforcement of Zoning Regulations, at Section 300, provides that "the Mayor shall administer and enforce the Zoning Regulations." Further, to the extent that Arboretum has identified a problem requiring correction, which further directly affects the Mayor's authority and ability to enforce said regulations. Section 210.1 provides that the Zoning Commission may from time to time amend any part or all regulations, subject to a proposal from private persons.

Moreover, even if this Board determines the absence of standing, it may consider the issue in the form of an advisory opinion, or alternatively, refer the matter to the Zoning Commission for purpose of its review and possible amendment under Section 210.1 and 210.2. Further, this Board should note the Appellant's urging that the immediate appeal be considered a formal request for

corrective amendment of the regulations to clarify existing zoning regulations. Doing so ensures due process for the government and affected citizens in need of clarity of process to ensure enforcement of zoning laws. In this connection, while §101.6 states that "Informal requests for advice or moot questions shall not be considered by the Board," the immediate motion should be deemed a formal request. The Board should also consider issuing an advisory opinion because the proposed halfway house issue potentially affects all wards and all District citizens and, as the record reflects, is capable of repetition, yet evading review. *Roe v. Wade*, 410 U.S. 113 (1973).

CONCLUSION

For the foregoing reasons, the BZA should not dismiss this matter. Arboretum has pointed out major defects in the existing regulations which has major procedural implications for the public interest, governmentally and individually. The proper course of action is to ensure a resolution of the issue.

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2019, a copy of the foregoing Arboretum's Response to DCRA's Motion to Dismiss Appeal and Property Owner's Motion to Dismiss Appeal was served on the following:

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