

**BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA**

ARBORETUM NEIGHBORHOOD)	
ASSOCIATION)	
2412 Rand PI NE)	
Washington, D.C. 20002)	
)	
Petitioner,)	
)	
v.)	
)	
THE DISTRICT OF COLUMBIA,)	
)	
Serve: Muriel Bowser)	
John A. Wilson Bldg.)	
1350 Pennsylvania Ave., NW)	
Washington, D.C. 20004)	
)	
Office of the Attorney General,)	
441 4 th Street, NW)	
6 th Floor)	
Washington, D.C. 20001)	
)	
Respondent.)	

**AN APPEAL OF THE D.C. ZONING ADMINISTRATOR’S JANUARY 27, 2017
ZONING CERTIFICATION AND RELATED ZONING CERTIFICATION PRACTICES
THAT DEPRIVE THE BZA OF ITS JURISDICTION AND AFFECTED CITIZENS OF
NOTICE RIGHTS**

INTRODUCTION

Petitioner hereby appeals the D.C. Zoning Administrator’s unpublished January 27, 2017 Zoning certification and the process related thereto. The Zoning Administrator’s routine certifications are being used to demonstrate the D.C. Government’s approval of matter of right determinations without formal government review and without any notice whatsoever to the affected Advisory Neighborhood Commissions and/or affected citizens. Petitioner, Arboretum neighborhood Association, asserts that the Zoning administrator’s practice circumvents the BZA’s

jurisdiction and deprives potentially affected citizens and residents of the Arboretum community, as well as other similarly situated community residents, of appropriate notice of attempted zoning status verifications thereby impeding their rights to protect their respective properties.

FACTUAL BACKGROUND

1. The District of Columbia government is a municipality which, acting through its Zoning Authorities, implements certain zoning regulations. Those regulations govern the location of various structures, buildings, and businesses.
2. Petitioner, the Arboretum Neighborhood Association, is a non-profit community organization that advocates for the needs and concerns of the Arboretum community with respect to civil and human rights, public health and safety, as well as other pertinent matters.
3. On November 1, 2018, the Federal Bureau of Prisons (“BOP”) awarded a five (5) year contract to CORE D.C., LLC for a 300 bed Residential Re-entry Management Center (“RRMC”), commonly referred to as a Halfway House. Pursuant to its contract award, CORE DC and the BOP initially expected to locate the RRMC at 3400 New York Avenue, N.E.
4. As a result of CORE’s contract award, it was required to establish to the BOP that it secured local government “approval” of its zoning for the intended location. Prior to its contract award, CORE secured two (2) distinct Zoning Certifications from the D.C. Zoning Administrator. See Exhibits 1 and 2. The zoning certifications are not required to be published or disclosed to the BZA, the ANC, or affected citizens Associations. There is no Zoning Authority scrutiny associated with the Zoning Administrator’s transmittal to prospective developers or property users.
5. As a result, a developer or property user can effectively circumvent public scrutiny, including this agency’s jurisdiction. Despite a January 27, 2017 zoning certification, the affected ANC

and residents of the Arboretum community were never directly notified by the D.C. government that the Zoning Administrator had issued a zoning Certification to CORE related to both its intended use of 3400 New York Avenue as a “matter of right”, or that CORE intended to use the certification as proof to the BOP that the D.C. government authorized CORE’s matter of right use to locate 300 persons in a “large scale” building in/near the Arboretum Community.

6. The particular form, titled “Zoning Certification”, is routinely completed by Applicants, not the Zoning Administrator, without any scrutiny whatsoever by the D.C. Zoning authorities, and then issued. This practice effectively allows the prospective property user or developer to circumvent Zoning Authority scrutiny when disputed matter of right uses occur, as here. It also allows them to circumvent public notice.
7. On two (2) distinct occasions, CORE, a prospective property user of a 300 resident half-way house, secured the aforementioned zoning certification; in the latter instance CORE used the Zoning Administrator’s certification in its federal procurement process with the BOP as proof of the D.C. Government to use its facility as a matter of right. See Exhibit 1.
8. Given the absence of notice of the Zoning Certification, the affected community only recently learned of its existence as a result of a Government Accounting Office (“GAO”) Bid Protest decision related to the underlying contract award. The affected ANC and citizens in the potentially affected communities indirectly received notice of the January 27, 2017 Zoning Certification almost two (2) years after its execution, subsequent to the GAO February 21, 2019 decision.
9. Upon information and belief, CORE still intends to use property under the same Zoning status to operate the property as a matter of right. Therefore, the issue is still ripe, and Petitioner’s

rights continue to be violated. In addition to their substantive rights, the Zoning Administrator's routine issuance of "Zoning Certificates" without public reporting or disclosure renders the practice arbitrary and capricious. It also offends DC Zoning Authorities' jurisdiction to hear disputes regarding matter of right uses and Petitioner's rights to due process. D.C. Citizens simply do not enjoy notice of issued "Zoning Certifications" used by private parties to demonstrate matter of right use and proof as to the D.C. government's position on such use.

10. The Zoning Administrator's certification, if then disclosed to the Arbitrary Community in 2017 would have been more timely disputed. The absence of an opportunity to challenge and timely appeal the Zoning Administrator's January 27, 2017 decision violates Petitioner's due process rights.

11. Petitioner hereby seeks the following relief:

- a. That the BZA has standing to consider the extent to which the Zoning Administrator's Zoning Certificate practice violates Petitioner's due process rights;
- b. That the Zoning Administrator should be required to submit any request for a matter of right determination in an appropriate disclosure to the BZA (with copies to the affected ANC) for its review and consideration prior to issuing an independent "Zoning Certification";
- c. That the Zoning Administrator should be precluded from issuing certifications completed exclusively by proposed property users without any independent verification, and that said Neighborhood Associations—such as Arboretum-- should be notified in writing, as well as to the local ANC, and that said "certifications" do

not constitute final D.C. government approval of the stated use of the property as “a matter of right.”;

- d. Declare that the Zoning Administrator’s Certification, dated January 27, 2017 does not constitute a binding legal decision of the D.C. government.
- e. Declare that the January 27, 2017 Zoning Certification is a public document and affected citizens, including Petitioner, should receive timely notice of the issuance thereof.

Respectfully submitted,

Donald M. Temple, Esq. [#408749]
1310 L Street NW, Suite 750
Washington, DC 20005
(202) 628-1101 Phone
(202) 628-1149 Fax