

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST. NW.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

(L&O:LNG:lng)

94-048-L

February 16, 1994

Jim Brandon
Chairman, ANC 2-F
P.O. Box 34091
Washington, D.C. 20043

Re: Request for legal advice concerning a matter
before the Board of Zoning Adjustment

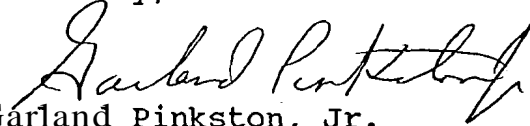
Dear Chairman Brandon:

This is in response to your January 6, 1994 letter to Leo Gorman of this Office in which you request the advice of this Office as to what steps ANC 2-F should take in order to "nullify" a decision of the District of Columbia Board of zoning Adjustment relating to property located at 1499 Massachusetts Avenue, N.W.

Pursuant to § 15(d) (3) (A) of the Advisory Neighborhood Commissions Act of 1975, as amended, D.C. Code § 1-263 (d) (3) (A) (1992), the Corporation Counsel is required to provide to Advisory Neighborhood Commissions "[l]egal interpretations of statutes concerning or affecting the commissions, or of issues or concerns affecting the Commissions." This mandate does not include advice of the nature you seek, other than to say that, generally speaking, final decisions of the Board of Zoning Adjustment are decisions in contested cases under the D.C. Administrative Procedure Act, and therefore are sUbject to jUdicial review by the D.C. Court of Appeals upon the filing of a timely petition for review in that Court. See D.C. Code §§ 1-1502(8), 1-1509, and 1-1510. Under § 13(g) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(g) (1992), an ANC does "not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts." This prohibition applies to the filing of a petition for review in the D.C. Court of Appeals, as well as to the filing of a complaint in a trial court such as the Superior Court of the District of Columbia. Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1375-1376 (1977). section 13(g) goes on to provide, however, that the prohibition on an ANC's instituting a legal action in a court "does not apply to or prohibit any Commissioner from bringing suit as a citizen."

Whether a legal action by an ANC 2-F commissioner, acting as a private citizen, would be possible, and if possible would be successful, in the instant case is not a matter upon which this Office could appropriately render advice, given the fact that this Office serves as the attorney for the Board of Zoning Adjustment.

Sincerely,



Garland Pinkston, Jr.
Deputy Corporation Counsel
Legal Counsel Division

cc: The Honorable Harold Brazil
Chairman
Committee on Government Operations

Madeliene H. Robinson
Director
Office of zoning

Regena Thomas
Director
Office of Constituent Services