

Mr. Raughley L. Porter, Building Inspection Engineer (cont'd)

with Dr. Moser, on the theory that his, Dr. McNally's occupancy of the office was illegal as being in violation of the Zoning Ordinance. The Building Inspection Engineer, as a result of Dr. McNally's inquiry, ordered that he vacate the office. Thereafter, in a similar case, Judge Manley held that non-resident doctors' offices which existed in residences prior to May 21, 1953 were valid non-conforming uses (see Jones and Tillman vs. Mayor and City Council, Daily Record, January 30, 1956).

In the case of McNally vs. Moser, decided by the Court of Appeals on May 8, 1956, Judge Hammond held for the Court that the agreement between the two doctors was valid, and that the alleged zoning violation relied upon by Dr. McNally did not render the agreement invalid. The Court of Appeals cited the Jones and Tillman cases, indicating that the decision therein was generally operative.

Under the circumstances and facts of this particular case, and in view of the final outcome thereof through the decision of the Court of Appeals, it is the opinion of this office that a certificate of occupancy for a non-resident professional office could properly be issued on the above property.

Very truly yours,

/s/ THOMAS N. BIDDISON
City Solicitor

/s/ SHIRLEY B. JONES
Assistant City Solicitor

B/J/a