GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13338, of NUV-1, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.45 to continue to operate a community center in an R-4 District at the premises rear of 77 U Street, N.W., (Square 3117, Lot 48).

HEARING DATE: January 21, 1981
DECISION DATE: March 3, 1981

FINDINGS OF FACT:

1. The subject property is located at the premises, rear of 77 U Street, N.W., in the center of the square bounded by U and V Streets and North Capitol and First Streets, N.W. The site has no frontage on any public street. It is in an R-4 District.

2. The subject Lot 48, is approximately 64,240 square feet in area. The lot is an alley lot which is surrounded by row dwellings. A one story brick structure formerly used as a warehouse by the C&P Telephone Company and a metal quonset hut are located on the lot. Both were vacant from 1974 until 1978. The lot is bordered by a twenty foot alley on the south and fifteen foot alleys on the remaining three sides. The property is accessible from two alleys on V Street and two on U Street.

3. The brick structure has approximately 7600 square feet of floor area and the quonset hut has approximately 2,000 square feet of area.

4. The property currently operates as a community center pursuant to this Board's Order No. 12563, dated March 16, 1978, and Certificate of Occupancy No. B-107383. Approval was granted for two years, expiring on March 16, 1980. By letter of February 27, 1980, the Zoning Inspection Branch advised the applicant to file a new application prior to the expiration of the current permit. The subject application was filed three and one-half months later.

5. The applicant proposes to continue to operate the facility as a community center.

6. The applicant, NUV-1, is a non-profit corporation duly registered as such in the District of Columbia. NUV-1 officers are residents of the neighborhood and the corporation was formed for the purpose of establishing and operating a multi-use community arts center at the subject site.

7. The applicant, proposes to provide programs and services for area youths primarily between the ages of five and fifteen years. Planned programs include music, art, dance and theatrical arts instruction, home improvement and crafts programs and recreational outdoor sports activities.

8. There will be no articles of commerce for sale on the subject premises.

9. The applicant receives assistance from the Howard University Theater, the Cultural Arts Alliance of the Smithsonian and a number of other community organizations. The subject buildings were donated by the Chesapeake and Potomac Telephone Co. The George Hyman Construction Co., has provided management assistance and has contributed the work of the general trades in renovating the premises.

10. There was no report of Advisory Neighborhood Commission 5C on this application.

11. There were letters in the file and testimony at the public hearing from surrounding residents complaining of the noise, the extended hours of operation of the subject center and disorderly conduct from persons at the center which disturbs the peaceful atmosphere of the neighborhood. The Board requested the Office of Planning and Development to obtain from the Police Department a report of complaints to the Department concerning the subject property.

12. This Board's Order No. 12563 clearly limited the hours of operation at the center as follows:

a. Any outdoor activity in the center shall be terminated by 10 0'clock p.m.

b. All activities, including indoor and outdoor activities, shall be terminated by midnight.

13. The Office of Planning and Development, by report received February 12, 1981, supplied the Board with the records of the Police Department involving complaints and responses at the subject site. The records disclosed complaints and responses registered at all hours of the day and night, including as late as 4:30 a.m. Between January 1, 1980 and December 31, 1980, there were thirty-six complaints. The complaints included larceny,simple assault, disorderly conduct, burglary, shooting and traffic complaints.

14. The Board requested the Director of the Center to submit additional information which would include a petition from the neighbors within 200 feet of the site who favor the application, and a notarized statement from the Board of Directors of NUV-1, stating that they would adhere to any condition imposed by the Board in its Order. This information was requested at the time of public hearing, and again by letter dated February 5, 1981. No response was received, and the Board is unable to find in the record any community support for the project from persons living in the immediate area who are most directly affected.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires compliance with the requirements of Paragraph 3101.45 of the Zoning Regulations, a showing that the proposed use can be permitted without an adverse impact on the use of neighboring properties, and a showing that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps. The Board concludes that the applicant has failed to satisfy the requirements of Subparagraph 3101.453 in that the subject center is objectionable in a residence district because of noise which creates an adverse impact on the use of neighboring properties. The Board is also concerned that the applicant has failed to honor the conditions of the Board's prior Order and has substituted, without Board approval, the conditions of its own Board of Directors. The Board also notes that the applicant has not responded in a period of two months to the Board's request for further evidence. The Board also notes as found in Finding No. 4 that the applicant appears indifferent to Government notices and that the applicant had been functioning without a valid Certificate of Occupancy.

The Board notes that the applicant failed to submit for the record the statement from the Board of Directors, requested by the Board, that the applicant would comply with any conditions imposed by the Board in its Order. The Board therefore cannot conclude that the applicant will abide by the Order of the Board.

Accordingly, for all these reasons, it is ORDERED that the Application is DENIED.

VOTE: 4-0 (Douglas J. Patton, William F. McIntosh, Connie Fortune to DENY: Charles R. Norris to DENY by PROXY).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 20 MAR 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13338, Motion for Reconsideration in the application of NUV-1, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.45 to continue to operate a community center in an R-4 District at the premises rear of 77 U Street, N.W., (Square 3117, Lot 48).

HEARING DATE: January 21, 1981
DECISION DATE: March 3, 1981

DISPOSITION: The Board DENIED the application by a vote of 4-0 (Douglas J. Patton, William F. McIntosh, Connie Fortune to DENY; Charles R. Norris R. Norris to DENY by PROXY).

FINAL DATE OF ORDER: March 20, 1981

ORDER

The applicant filed a Motion for Reconsideration of the Board's Order denying the application. Section 5.42 of the Supplemental Rules of Practice and Procedure before the BZA states that a Motion for Reconsideration shall state specifically the respects in which the Final Decision of the Board is claimed to be erroneous, the grounds of the Motion and the relief sought. The applicant's Motion does not assert that the Board committed error. The applicant's motion is based on a submission of some of the evidence that the Board had requested at the time of the January 21, 1981 public hearing and again by letter of February 5, 1981. Prior to the March 3, 1981 decision of the Board, no response had been received until April 7 and May 5, 1981. Under Section 5.41 of the aforementioned Rules a Motion for Reconsideration may be filed within ten days of the Final Decision of the Board. The Board concludes that the record was closed at the time of the first submission of evidence and, also, that such evidence does not constitute grounds for Reconsideration. The applicant has had more than sufficient time to respond to the requests of the Board. The applicant's remedy is to file a new application under Section 5.6, wherein an applicant may file a new application after one year from March 3, 1981, the date of the Final Order of the Board. Accordingly, it is ORDERED that the Motion for Reconsideration or further relief is DENIED.

VOTE: 3-0 (Douglas J. Patton, William F. McIntosh and Connie Fortune to DENY; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 16 JUL 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."