

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13479, as amended, of the National Center on Institutions and Alternatives, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Chief, Zoning Review Branch, dated February 18, 1981, disapproving an application for a Certificate of Occupancy for the use of the subject premises as a philanthropic and eleemosynary institution or in the alternative, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.47 to use the subject premises as a social service center in an R-5-B District at premises 1337 - 22nd Street, N.W., (Square 69, Lot 809).

HEARING DATE: May 13, 1981
DECISION DATE: June 3, 1981

FINDINGS OF FACT:

1. At the public hearing, the Board permitted the applicant to amend the appeal to include use of the subject premises as a social service center as a special exception under Paragraph 3104.47 of the Zoning Regulations.
2. The subject property is located on the east side of 22nd Street between Newport Place and O Street and is known as premises 1337 - 22nd Street, N.W. It is in an R-5-B District.
3. The subject site measures nineteen feet wide by one hundred feet deep. The site is improved with a three story brick row dwelling with basement.
4. On July 8, 1968 a Certificate of Occupancy No. B55596, was issued for the use of the subject property as a flat, one unit first floor, one unit, second and third floors.
5. The appellant, the National Center on Institutions and Alternatives, hereinafter referred to as NCIA, rents the subject premises. The building is presently being used as office space and as a residence for several employees of the Center.

6. On January 30, 1980, the NCIA filed an application with the Zoning Administrator for a Certificate of Occupancy to use the subject building for office use. The application was disapproved on February 3, 1980.

7. On November 3, 1980, the owner of the subject premises was notified by the Zoning Administrator that the use of the building was in violation of the Zoning Regulations.

8. On December 22, 1980, the NCIA filed a second application for a Certificate of Occupancy to use the premises as commercial offices.

9. On December 23, 1980, the case was referred to the Corporation Counsel for enforcement of the violation.

10. On January 23, 1981, the NCIA was notified that the second Certificate of Occupancy application was denied.

11. On February 4, 1981, the NCIA filed a third application for a Certificate of Occupancy to use the subject premises as offices for a philanthropic and eleemosynary institution.

12. On February 18, 1981, the Zoning Administrator disapproved the third application on the grounds that the proposed use did not fit the definition of philanthropic or eleemosynary institution under the Zoning Regulations, namely a place of asylum, other than a convalescent or nursing home or hospital, supported wholly or substantially by endowment or contribution. The NCIA was advised to apply to the Board of Zoning Adjustment for a variance from the use provisions.

13. On March 11, 1981, the subject appeal from the Zoning Administrator's decision was filed at the BZA.

14. The NCIA submitted the testimony of its president, Dr. Jerome Miller, detailing the activities of NCIA. There was testimony that NCIA is a private, non-profit corporation organized exclusively for charitable and educational purposes. It is dedicated to developing and promoting strategies and action toward reducing the number of people involuntarily institutionalized. The NCIA uses the subject property for office space, and to carry on several projects which provide direct services, such as counseling to institutionalized or formerly institutionalized persons, such as those in mental institutions, nursing homes, or penal institutions, especially to persons in the District of Columbia. The NCIA receives its monies, with the exception of the small federal grants, from private foundations.

15. The NCIA further testified that in addition to its other activities, the organization provides rehabilitative and counseling services by developing alternative plans to incarceration for persons already convicted of crimes. Such a plan may include a job component, psychological/psychiatric counseling, a restitution component, and residential placement. Dr. Miller testified that approximately fifteen clients are serviced each week at the subject premises, although they handle many more clients outside the premises. The majority of the referrals come from public defenders and defense attorneys.

16. Dr. Miller testified that NCIA employs eleven permanent staff members and several part-time consultants, who work Monday through Friday, from 9:00 a.m. to 5:00 p.m.

17. The NCIA submitted the testimony of its next door neighbor, Mr. Jack Horner. Mr. Horner testified that NCIA was an excellent neighbor and an asset to the neighborhood. He submitted to the Board a petition signed by ten neighbors in support of NCIA's position.

18. In addition to that petition, the NCIA submitted as an exhibit, individual petitions signed by twenty-three neighbors supporting NCIA's proposed use of the subject site.

19. The NCIA testified that the subject property was renovated in 1978 by the owner with the intent that the building be used as office space. The Congressional Quarterly is located in the next block at 1414 22nd Street, N.W., across the street from a restaurant, a travel agency, and four commercial shops. Blackies House of Beef, the new Marriott Hotel, and the former site of Capital Cadillac are located two blocks away in the 1100 block of 22nd Street, N.W. All are in commercial districts.

20. There is a small bronze plaque on the subject building with the tenant's name imprinted thereon.

21. A resident of the adjoining building testified that the subject building was exceptionally maintained. There was no testimony whether the proposed use would be unduly objectionable to the neighboring properties because of noise or other conditions.

22. There was no evidence or testimony in the record that the size of the facility would not be out of scale and character with the immediate neighborhood. There was no testimony or evidence that no structural changes would be made except those required by other municipal laws or regulations.

23. As submitted by the NCIA, Websters Dictionary defines asylum as "1. An inviolable sanctuary giving shelter to criminals and debtors,...2. Any place of retreat and security; shelter 3. Protection afforded by such sanctuary or place of retreat 4. An institution for relief of the destitute or afflicted, esp. one for the insane." The NCIA argued that it qualifies as an "asylum" as defined by the fourth definition in Websters Unabridged Dictionary, as "an institution for the relief of the destitute". An institution, as defined by Webster's is "an established society or corporation, especially one of a public character, as a charitable institution." The appellant contends that it is a non-profit charitable organization, its clients are clearly destitute and that it provides direct services to those clients on the premises at no charge.

24. The NCIA further contended that since the Zoning Regulations do not define "asylum" or "institution" and refer to the definitions in Websters Unabridged Dictionary, and since the Zoning Regulations do not state that only the first definition of a word be used, the Board of Zoning Adjustment must give equal weight to the fourth definition of the word "asylum".

25. The NCIA further contended that howhere in the Zoning Regulations does it state that the terms "non-profit organization" and "philanthropic or eleemosynary institution" are not mutually exclusively and that the applicant may fit both definitions, depending on the situation in which the word is used.

26. The Zoning Administrator testified that the NCIA furnished his office with documents indicating that the subject corporation was non-profit and a listing of contributions received in 1981. Although requested to be the Zoning Administrator, the appellant failed to address itself to the issue of "asylum". Based on the evidence, the Zoning Administrator ruled that the appellant did not qualify as a philanthropic or eleemosynary institution as defined in the Zoning Regulations. The Zoning Administrator also testified that the Board has consistently held that an applicant's status as a non-profit organization does not grant it the status of a philanthropic or eleemosynary institution. In BZA Order No. 12184, issued April 22, 1977, the Board found that the Phelps-Stokes Fund was a non-profit corporation incorporated for the purpose of advancing the education of Negroes, North American Indians and needy White students. The Board upheld the decision of the Zoning Administrator that the applicant was not entitled to use property in an R-5 District as a matter-of-right as a philanthropic or eleemosynary institution. The Board found that the property was used for no purpose other than office space for a non-profit organization and there was no proof offered that it constituted an asylum. In the same Order the Board denied the use variance relief since the applicant failed to show that the property could not be used residentially, the purpose for which it was zoned.

27. The Dupont Circle Citizens Association and Advisory Neighborhood Commission - 2B were admitted by the Board as intervenors.

28. The Dupont Circle Citizens Association opposed the granting of the appeal on the following grounds: (1) As testified by the Zoning Administrator, the appellant failed to establish itself as an asylum. (2) The appellant since February 3, 1980 has been occupying the premises illegally. The NCIA could have come before the BZA for relief but failed to do so and continued to file applications for Certificate of Occupancy for office uses. (3) The appellant has failed to meet the burden of proof that the subject property could not be used for residential purposes, the purpose for which it is zoned.

29. As to the special exception, the Dupont Circle Citizens Association argued that insufficient notice was given by the BZA. The Association argued that the applicant did not meet its burden of proof in satisfying by probative evidence, the requirements of Paragraph 3104.47 of the Zoning Regulations. The Association further argued that the NCIA did not meet the definition of a social service center as defined in the Zoning Regulations as a "community correctional rehabilitation assistance or treatment center for persons in need of such assistance".

30. Advisory Neighborhood Commission - 2B opposed the granting of the appeal on the grounds that the proposed use is neither philanthropic or eleemosynary, the site is being used illegally and the subject property should be returned to the market for residential use. The ANC was concerned that granting of the appeal would set a precedent to allow further non-residential uses in residentially zoned areas. As to the special exception, the ANC had no formal recommendation.

31. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board notes that the matter before the Board is an appeal, wherein the Board must determine whether the Zoning Administrator erred in administering and enforcing the Zoning Regulations. The report of the ANC states no specific errors or logic for its conclusions that the proposed use is not a philanthropic or eleemosynary institution. The illegal use of the property and the potential use of the property for residential purposes are not germane to the appeal.

32. The Board finds that the primary thrust of the definition of asylum is as a place, a physical entity for the shelter of individuals.

33. The Board finds that the intent of the Regulations is to consider a philanthropic or eleemosynary institution as a place of residence. A philanthropic or eleemosynary institution is a use permitted as a matter-of-right in a residential district. The office of a non-profit organization, which is not a residence, is not permitted as a matter-of-right until a commercial district.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the relief sought is a reversal of the decision of the Zoning Administrator, or in the alternative, to grant a special exception to use the subject premises as a social service center. As to the appeal, the Board concludes that the decision of the Zoning Administrator was correct, and should be upheld. At the time the ZA ruled he had no probative evidence to establish that the appellant is a philanthropic and eleemosynary institution. That evidence the ZA had indicated to him that the appellant was a non-profit organization. There was no proof that the appellant constituted an asylum.

Assuming that the appellant had put before the ZA what it has now presented to the Board on its status as an asylum, the Board would still uphold the Zoning Administrator's decision. The Board is of the opinion that the appellant's contention that it qualifies under the fourth definition of asylum as defined in Webster's Unabridged Dictionary is contrary to the meaning and intent of the Zoning Regulations. The first three definitions encompass a place, a site, a haven, a sanctuary, a physical institution. The fourth definition must be read with the other three. A society or corporation is not a physical institution. It is a legal entity. Any ordinary, prudent person would be forced to strain his or her intellect to encompass what the appellant suggests. The Board concludes that the appellant's proof evidences that the site is used as office space for a non-profit organization and nothing more.

The Board notes its decision in appeal No. 11510, wherein the Board ruled on the deference between a private club and a non-profit organization. In that Order, the Board stated in part:

"The Zoning Commission has in the regulations defined both a "Private Club" and a "Non-Profit Organization", and a review of the progression of permitted uses in the regulations indicates that a "Private Club is a more restrictive use than a "Non-Profit Organization" since they are first permitted in the R-4 and SP Districts respectively. The Commission would not have done so had they not intended a distinction."

That matter was eventually ruled upon by the D.C. Court of Appeals in Legislative Study Club Inc. v. D. C. Board of Zoning Adjustment, 359 A.2d 153 (1976). In affirming the Board's decision, the Court stated "there is a reasonable basis for the Board's interpretation, and it will not be disturbed."

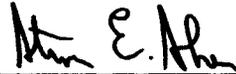
In the subject appeal, the Board believes there is a reasonable basis to distinguish between a philanthropic institution and a non-profit organization. If the Zoning Commission had intended that an organization could fit either definition, it would not have created two different definitions for two different uses and regulated them differently. The Board concludes that the subject use is more properly the office of a non-profit organization than a philanthropic institution. Accordingly, it is ORDERED that the appeal is DENIED and the decision of the Zoning Administrator is UPHOLD.

As to the special exception, the Board concludes that the applicant is not even eligible to apply for such an exception. The proposed use is an office use, as concluded above, and the applicant should not properly be before the Board under Paragraph 3104.47. However, even assuming that the proposed use meets the definition of a social service center, the Board concludes that the application must be denied. The applicant failed to carry its burden of proof to establish that it met the requirements of Paragraph 3104.47. Accordingly, it is also ORDERED that the special exception relief is DENIED.

VOTE AS TO THE APPEAL: 4-1 (Walter B. Lewis, Connie Fortune, Douglas J. Patton and William F. McIntosh to DENY the Appeal and UPHOLD the Decision of the Zoning Administrator; Charles R. Norris to GRANT by PROXY).

VOTE AS TO THE SPECIAL EXCEPTION: 3-2 (William F. McIntosh, Douglas J. Patton and Connie Fortune to DENY; Walter B. Lewis to GRANT, Charles R. Norris by PROXY to GRANT).

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

ATTESTED BY: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 14 SEP 1981

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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."