

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13682, of the National Memorial Church of God, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to use the ground floor of the subject premises as a pre-school Montessori Program consisting of twenty children, one teacher and one aide in an R-1-B District at the premises 4100 16th Street, N.W., (Square 2635, Lot 29).

HEARING DATE: February 17, 1982
DECISION DATE: March 3, 1982

FINDINGS OF FACT:

1. At the public hearing held on February 17, 1982, the owners of several of the abutting and surrounding properties advised the Board that they had not received written notice of the hearing. Review of the record reveals that the names of certain property owners were left off the list submitted by the applicant. The property was properly posted with a notice of the hearing, and the most directly affected property owners received actual notice of the public hearing. The opposition parties present at the hearing advised the Board that they preferred to have the case heard on that day rather than have it continued to another day. The Chairman ruled that the case would go forward on its merits.

2. The subject property is located in an R-1-B District on the northwest corner of the intersection of 16th and Taylor Streets, N.W.

3. The subject property is rectangular in shape and has 163.50 feet of frontage on 16th Street and 135 feet of frontage on Taylor Street. The site is bordered by a fifteen foot wide public alley on the west.

4. The property is improved with a large stone building used as the National Memorial Church of God. The building serves two separate congregations, with separate activities.

5. The applicant proposes that a pre-school Montessori Program be operated out of the ground floor of the subject building. The school would have a maximum of twenty children, ages two and one-half to six. The staff of the school would consist of one teacher and one aide. The hours

of operation will be from 9:00 A.M. to 12:30 P.M., Monday through Friday. The school operates during the months of September through May.

6. The school would use existing facilities inside the Church, as well as one outdoor concrete surfaced courtyard. There would be no additional construction occasioned on the part of the school.

7. The school has been in operation at the subject location since approximately October of 1980. The school started out on an informal basis, and it was not until June 5, 1981 that the Zoning Administrator advised the representative of the school that the use was not permitted without approval from the Board of Zoning Adjustment as a special exception. The school has been and continues to be operating without a proper Certificate of Occupancy in violation of the Zoning Regulations.

8. The school has not had and will not have any articles of commerce for sale.

9. There is more than 2,000 square feet of play area located in the two interior rooms used by the school. The outdoor patio also used for play area contains approximately 1200 square feet.

10. The outdoor area used for play area is located approximately ten to twelve feet below the level of the grade. It is surrounded on two sides and part of a third by walls of the Church. The remaining walls are composed of cinder blocks. The patio is located approximately twenty-five feet from the north side lot line.

11. The use of the portion of the premises proposed for the school will not conflict with other church use.

12. Of the fifteen children presently attending the school, eight live within a ten block radius of the school. One lives within one block.

13. There is a paved off-street parking area capable of accommodating nine cars. The parking area is located to the west of the Church building, adjacent to a fifteen foot wide public alley. The spaces are directly accessible from the alley, which connects to Taylor Street.

14. There is no designated location for picking up and dropping off children. Those activities usually occur either in the Church parking area or on Taylor Street adjacent to the Church property.

15. The Office of Planning and Development, by memorandum dated February 12, 1982 and by testimony at the

hearing, recommended that the application be conditionally approved. The OPD reported that the proposed school will not impact on its environs due to noise, as whatever sounds are made by the children's activities on the interior of the premises will be buffered by the Church building construction and the distance from nearby buildings. The OPD was of the opinion that the below grade siting of the exterior play area, coupled with its distance from the nearest building, will sufficiently buffer any noise or visual impacts from the children at play from the adjacent properties. The OPD reported that there was sufficient available off-street parking to accommodate the needs of staff and for picking up and dropping off children. The OPD further reported that the applicant met the requirements of Sub-paragraphs a, b and d of Paragraph 3101.41. The OPD recommended approval of the application on the conditions that the applicant demonstrate that the use is reasonably necessary in the neighborhood and that no picking up or dropping off of children occurs on 16th Street.

16. Advisory Neighborhood Commission 4C, by letter dated February 11, 1982 and by statement dated February 17, 1982, opposed the application on the following grounds:

- a. The applicant cannot meet the requirement of Sub-paragraph 3101.41c, that the use be reasonably necessary or convenient to the neighborhood which it is proposed to serve and that the enrollment be limited primarily to children residing in that neighborhood. The ANC noted that the residents of the neighborhood are primarily middle age adult families, retired senior citizens and other families with very few pre-school age children. The ANC noted that any existing neighborhood need could be met by a Montessori Program already operating at the Simpson-Hamline United Methodist Church at 4501 16th Street, N.W.
- b. The applicant has less than the required 2000 square feet of outdoor play area located in the patio described in Finding No. 10.
- c. Utilization of outdoor areas other than the patio will infringe upon the rights of adjacent property owners with regard to noise, possible trespassing and other inconveniences.

17. The application was opposed by Dr. and Mrs. Walter Tutt, the owners and occupants of the adjoining single family dwelling to the north. Dr. Tutt also uses part of the building for his dental practice. The opposition was

based on the following grounds:

1. The school is not reasonably necessary for the neighborhood, because there are very few young children to be served, and whatever need exists can be served by existing schools in the area.
2. The noise emanating from children at play is objectionable and adversely affect the use of the dwelling as a house and doctor's office. Dr. Tutt testified that he and his patients have continually heard and been bothered by the noise coming from the Church property. Some of that noise comes from summer school programs and maintenance activities of the Church both unconnected with the subject Montessori School. However, Dr. Tutt testified that the noise resulting from four to five children from the subject school playing in the patio is sufficient to be objectionable to him in the use and enjoyment of his property. The addition of more children, up to eleven and possibly as many as twenty, would be exacerbating the problem.

18. The Rock Creek East Neighborhood League and one other resident of the subject square opposed the application on essentially the same grounds raised by the ANC and Dr. Tutt.

19. There were several letters on record, and testimony at the hearing in general support of the application and the conduct of the school by the applicant and its operator.

20. The Board is required by statute to give "great weight" to the issues and concerns of an ANC when expressed in writing. In addressing those issues and concerns, as well as the other issues raised by other parties in opposition and the comments of the Office of Planning and Development, the Board finds as follows:

- a. Sub-paragraph 3101.41d of the Zoning Regulations requires that "There shall be provided on the same lot with such use not less than 100 square feet of play area for each child." The Regulations do not explicitly require that space to be outdoor play area, and the Board has consistently interpreted that requirement to be met with indoor, outdoor or a combination of both areas. As set forth in Finding of Fact No. 9, there is more than sufficient play area to

meet the 2,000 square feet required by Sub-paragraph 3101.41d.

- b. For the purposes of determining compliance with the requirements of Sub-paragraph 3101.41c, the Board must first determine what is the neighborhood at issue. The applicant argued that a ten block radius from the school be used. The Board has applied such a standard in other cases, but only where there is no other reasonable basis for defining neighborhood boundaries. In the subject area, the neighborhood is clearly defined by substantial physical separation from other areas, i.e., Piney Branch Parkway to the south, Rock Creek Park to the west, Carter Barron park area on the north, and 16th Street, a 160 foot right-of-way street and major traffic arterial on the east. The Board finds that the neighborhood at issue is much more limited than the ten-block radius suggested by the applicant. Only one of the fifteen current students lives in that area. Even expanding the area to the east adds only three more students. The Board finds that the enrollment of the school does not come primarily from the neighborhood in which it is located.
- c. The applicant has not proven that the school is reasonably necessary in that neighborhood. The ANC's and other opposition's un rebutted testimony indicate that there are very few pre-school age children in the area, and there are already existing private schools in the area to meet the demand.
- d. The use as already operated and as proposed to be operated has been and would likely continue to be objectionable because of noise. The outdoor play area is located close to the adjoining house to the north. The retaining walls surrounding the patio do nothing to cut down noise, and may well cause it to echo and reverberate. The screening between the Church and the house to the north, as shown on the photograph marked as Exhibit No. 24F of the record is so minimal as to be ineffective. The Board credits the testimony of Dr. Tutt as to specific complaints about noise, over the report of the OPD based on a general observation.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Paragraph 3101.41 and Sub-section 8207.2 of the Zoning Regulations.

The Board concludes that the applicant has not complied with all of the requirements of Paragraph 3101.41. The applicant has met the play area requirements of Sub-paragraph d and the ban on sales of Sub-paragraph a. However, the testimony of the opposition clearly demonstrates that the school has been objectionable, and would likely be more objectionable in the future, because of noise. Further, the Board concludes that the use is not reasonably necessary to the neighborhood in which it is located, as the neighborhood is defined more narrowly than the applicant would suggest. Further, because of the more limited scope of the neighborhood, the enrollment has not and could not come primarily from children residing in that neighborhood.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board further concludes that the special exception cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations and maps and will tend to affect adversely the use of neighboring property in accordance with said regulations and maps. It is therefore ORDERED that the application is DENIED.

VOTE: 4-0 (Connie Fortune, Walter B. Lewis, William F. McIntosh and Charles R. Norris to DENY; Douglas J. Patton not voting, not having heard the case).

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

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

FINAL DATE OF ORDER: JUL 29 1982

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."