

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 3202.42 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

DISPOSITION: The Board DENIED the application by a vote of 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).

FINAL DATE OF ORDER: July 29, 1982

ORDER

On August 9, 1982, the applicant filed a Motion for Reconsideration and/or Rehearing. The applicant requested that the Board reconsider its decision and enter an Order granting the application or in the alternative to grant a Rehearing to hear new evidence not available at the Public Hearing of February 17, 1982. The Motion requested that the Board reconsider its decision for the following reasons:

1. The position of the ANC was reached without consultation with the applicant, was erroneous with regard to the need for the facility and the number of pre-school children in the neighborhood and was in error that another school was in operation in a nearby church. The applicant further argued that the ANC was concerned with the impacts of activities not associated with the school.
2. The testimony of Dr. Tutt, the adjoining property owner, indicated objection to the summer school and church maintenance activities unconnected to the school use.
3. Insufficient weight was given to testimony in support.
4. The neighborhood limits imposed by the Board were

too restrictive.

5. The Board erred in its reliance on testimony regarding the existence of another school in the neighborhood.
6. The objectionable impacts testified to and cited by the Board were not related to the operation of the school.
7. The Board did not consider alternatives of imposing conditions to minimize noise or increase service to the neighborhood.

The Motion further proffered that if reconsideration was denied, rehearing should be granted because the applicant appeared before the Board pro se without benefit of counsel. If it had been better prepared with proper representation, the applicant could have presented 1980 Census information evidencing the number of pre-school children in the neighborhood, testimony to impeach the credibility of the testimony of Dr. Tutt, and evidence of further support from the Crestwood Citizens Association and approximately 120 families in the area. The applicant further would have questioned the formal vote of the ANC and could have asked the ANC to reconsider the matter.

Upon consideration of the Motion and the Final Order, the Board concludes that the material facts that the Board relied upon in denying the application were stated throughout the findings of fact and Paragraphs Two and Three of the Conclusions of Law and Opinion and that such conclusions flow rationally from the Findings.

In addressing the issues of the applicant as set forth in its motion, the Board note the following:

1. The ANC report was submitted in writing and was properly adopted by the ANC. The Board concludes that it made no error in affording the ANC report the "great weight" to which it is entitled.
2. The specific objectionable nature of the school, rather than the other uses of the church, was described by Dr. Tutt as set forth in Finding of Fact No. 17.
3. The Board is not required to state why it favored one witness over another. The existence of substantial support for the application does not mean that the Board had no choice other than to grant the Application and does not necessarily imply the absence of substantial support for the opposing position.

4. The Board concludes that Finding of Fact No. 20B clearly sets forth the rationale used by the Board in reasonably defining the neighborhood boundaries applicable to this case.
5. The testimony at the public hearing was indicative of an existing school in the area and that testimony was not convincingly rebutted by the applicant. The statement of Mrs. Lela Clayton, in response to a question from the Board, indicated the continued existence of a school at the other church in question. The Board must base its decision on the evidence of record before it.
6. The evidence was sufficient to support the Board's conclusion that the applicant failed to demonstrate that the school was not and would not be objectionable to neighboring property owners because of noise of the children at play.

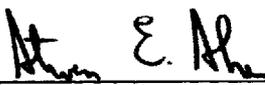
The Board further concludes that the burden of proof rests with the applicant, whether or not represented by counsel. No materially different evidence has been submitted in support of the Motion for Reconsideration/Rehearing which could not reasonably have been presented at the time of the public hearing. The applicant is merely seeking to reargue its case. Accordingly, it is ORDERED that the Motion for Reconsideration/Rehearing is DENIED.

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

DECISION DATE: September 1, 1982

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: OCT 12 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."

KATHYJ  
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