

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13773, of the Rock Creek East Neighborhood League, Inc., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of James J. Fahey, Zoning Administrator, made February 23, 1982, to approve a Certificate of Occupancy for the use of the subject premises as a Religious Education Building/Sunday School in an R-1-B District at the premises 4817 Blagden Avenue, N.W., (Square 2654, Lot 809).

HEARING DATES: July 7, 1982 and September 15, 1982
DECISION DATES August 4, 1982 and November 3, 1982

FINDINGS OF FACT:

1. The subject site is located on the south side of Blagden Avenue, between 16th and 17th Streets, N. W. It is in an R-1-B District at premises known as 4817 Blagden Avenue, N.W.

2. The site is 31,143 square feet in area, and is pentagonal in shape. It is improved with a detached two-story frame residence, constructed in the 1930's. The structure had been occupied and used as a church.

3. The subject site has approximately 200 feet of frontage along Blagden Avenue, which abuts the site to the north and west. Single-family detached dwellings abut the site on the northeast and southwest. A fifteen foot wide public alley abuts the site to the east and south. Other uses in the square consist of single family detached dwellings and two churches along 16th Street.

4. The site is located in the Crestwood neighborhood, which is comprised predominantly of single-family detached dwellings and several churches along 16th Street. The site is located in a large area of R-1-B zoning containing mainly single-family detached dwellings. Southwest of the site lies an extensive area of R-1-A zoning comprised of one-family detached dwellings. South of the site in question lies a small area of R-3 zoning and east of 16th Street lies an area of R-4 zoning. Both areas are developed primarily with row dwellings.

5. On February 1, 1982, an application was made for a certificate of occupancy to use 4817 Blagden Avenue, N. W., the subject site, as a "Religious Education Building/Sunday

School." This application was approved for zoning purposes on February 23, 1982, by James J. Fahey, Zoning Administrator. Additional building, electrical, and plumbing permits were applied for and granted at about the same time.

6. Zion Baptist Church Inc., intervenor herein, a non-profit corporation in the District of Columbia located at 4850 Blagden Avenue, N. W. is the owner of the subject site.

7. On March 23, 1982, an appeal from the subject decision of the Zoning Administrator was filed by Lela Y. Clayton, Chairman, Civil Affairs Committee, Rock Creek East Neighborhood League, Inc. The appellant alleged that it was aggrieved by said administrative decision since the actual proposed use is either prohibited by the Zoning Regulations or permitted only after approval by the Board of Zoning Adjustment. The appellant is a civic organization representing 743 homes in the neighborhood of the subject site.

8. The intervenor, at the Public Hearing of July 7, 1982, as a preliminary matter, questioned if the appellant had authorized the filing of the appeal in its name and if the persons present at the Public Hearing had the authority to proceed with the appeal on its merits. The intervenor argued that the record is devoid of such evidence. The Board heard testimony on these issues including a review of the By-Laws of the League. The Board determined that the Civil Affairs Committee on March 5, 1982, met with the Executive Committee and the question of filing the subject appeal was discussed. The Executive Committee approved a resolution to have the Civil Affairs Committee file the appeal and process it. On March 8, 1982, the resolution was adopted by the Association. The Chairman ruled that representatives of the League processing the appeal had the authority of the League to file and process the appeal before the BZA.

9. A second preliminary matter raised by the intervenors concerned an exchange of letters between the Zoning Secretariat and counsel for the appellant. On March 24, 1982, the Executive Director of the Zoning Secretariat wrote to the appellant's counsel as follows:

"The Board of Zoning Adjustment is in receipt of an appeal filed by the Rock Creek East Neighborhood League, Inc. regarding the use of the premises 4817 Blagden Avenue, N. W. My review of the appeal and the information submitted with it raises the following questions:

1. The appeal form cites the issuance of a Certificate of Occupancy that is challenged.

The accompanying statement and supporting information also refers to various building permits. Do you also wish to challenge the issuance of those permits?

2. The approval granted by the Zoning Administrator was for a "Religious Education Building/Sunday School." Is it your contention that the Zoning Administrator was in error in approving what was presented to him, or is it your contention that the applicant changed the proposed use after zoning approval was given? If the latter, your remedy may not be an appeal to the Board but a request to the Zoning Administrator to enforce the Regulations.

I would appreciate it if you would respond to these two questions."

10. On April 15, 1982, in response, the appellant replied as follows:

"In answer to both of your questions, please be advised that the position of appellants is that the Certificate of Occupancy should not have been issued. The Administrator knew or should have known that the applicant did not intend to use the property for the purposes stated on the application.

The appellants are requesting that the Certificate of Occupancy be revoked.

It is requested that a hearing before the Board of Zoning Adjustment on this appeal be scheduled at the earliest possible date."

11. Intervenors argued that from the above correspondence, there appears to be no question that a valid certificate of occupancy was issued. The issue raised is a presumed misuse of the certificate of occupancy after its issuance. Such an issue is not within the purview of the jurisdiction of this Board. The intervenor argued that the appeal is not properly grounded and should be dismissed.

12. Counsel for the appellant argued that the certificate of occupancy application was for a religious education building/Sunday school. He argued that the only one of those uses that would be permitted in an R-1 District without having to have a special exception from the Board of Zoning Adjustment would be a Sunday school. The Regulations which relate to educational institutions permit public schools, which are owned by the Board of Education as a matter-of-right. Private schools under the Regulations

would have to have the approval of the Board of Zoning Adjustment. The application was made and the certificate was issued on the basis of an application for a Sunday school. The appellant proffered that the evidence would show that the Zoning Administrator knew or should have known because of the other evidence submitted at the time the application was filed that the structure was never intended to be used as a Sunday school.

13. The Board took the intervenor's Motion to Dismiss under advisement and had the appellant proceed on the merits of the appeal.

14. The appellant's witnesses testified that the subject certificate of occupancy authorized the use of the structure as a Religious Education Building/Sunday School, yet the first page of the architect's plans stated "Family Life Center," not "Sunday School." They observed that the structure was being gutted, bathtubs were being removed, the kitchen was being moved and a stage was to be created. The estimated amount for the work to be done was \$35,000. The witnesses argued that a community center was being established, not a Sunday School. They produced a copy of the permit which stated "to relocate kitchen, first floor, add toilet on second floor, perform cosmetic treatment to structure."

15. The appellant's witnesses further proffered testimony that a variety of uses have been occurring in the building, or are contemplated to occur in the building in the future. The Board determined that such testimony would be irrelevant to the issue of whether the Zoning Administrator correctly applied the Zoning Regulations in approving the certificate of occupancy application for zoning purposes.

16. The appellant further argued that the Zoning Administrator should have known, from the name in the plans and the dollar value on the building permit application, that the building was not going to be used as a Sunday School. The appellant argued that the Zoning Administrator should have questioned the applicant before approving the permit application, and should not have determined that the use was permitted.

17. The appellant argued that the Zoning Administrator applied too liberal an interpretation of what is permitted as a Sunday School.

18. Under Paragraph 3101.33 of the Zoning Regulations, a "Sunday school building" is permitted as a matter-of-right in the R-1-B District.

19. A "Sunday School building" is not defined in Section 1202 of the Zoning Regulations. Under Sub-section 1202.2, any word not defined shall have the meaning given in Webster's Unabridged Dictionary.

20. Webster's Unabridged Dictionary defines a Sunday School as " a school held on Sunday for purposes of religious education." Religious education is defined as "instruction in religion as a subject of general education ... instruction in the principles of a particular religious faith."

21. The Zoning Administrator was of the opinion that the name Sunday school was derived many years ago when there was no mass transit and the convenience of the automobile. Not only were services held in most Christian churches on Sundays, but religious education was also given the same day, thereby eliminating several trips to the church. In more modern times, with the convenience of mass transit and the automobile, Sunday school may include education every day of the week.

22. The Zoning Administrator further was of the opinion that the concept of what constitutes a Sunday school has also changed over the years, from a place limited to the reading and study of the Bible, to a more modern church, where people not only read and study the Bible, but in their own way try to put into practice what they have learned from the Bible. The Zoning Administrator explained that not only will there be the teaching of the Bible in the present day Sunday school, but there will be other forms of religious education, from how to better help the sick, the handicapped and the elderly, to serving youth.

23. The Zoning Administrator testified that he did question what a "family life center" was because it was on the plans. The Zoning Administrator was advised by Reverend Veazy, the minister, that it was a name put on a building. The building would be called a Family Life Center. By going into detail with Reverend Veazey, the Zoning Administrator was convinced that the building would be a place of religious worship, where there would be a combination of teaching for children and adults, where there would be religious meetings and where there would be care for the elderly, but not as a principal use.

24. The full set of plans that were submitted for the building permit were reviewed by the Board. Page 1 of the plans is nothing more than a cover sheet with the name of the center on it. The second page is a first floor plan showing existing conditions. Page 3 of the plans is a second floor plan showing existing conditions. There are no pages marked 4, 5, 6, or 7. Page 8 is the first floor plan and Page 9 is the second floor plan, showing demolition and

new work, including moving of partitions and renovation of the existing building. The next page is unmarked. It is the electrical lay-out. The next page of the plans is also unmarked. It is a diagram of the plumbing lay-out of the building. The last page of the plans is another electrical plan for the building.

25. The Zoning Administrator testified that the occupancy permit was limited to a Sunday school/religious education building. The principal use of the building would be limited to that use. In addition to that use, the church could have incidental or accessory related uses in the building, uses that are customarily incidental and subordinate to the principal use. From time to time there could be a bake sale, to raise funds for the school. They could have on occasion, religious services that would occur on the premises, for either the children or adults, whichever may be attending. In addition, to that, they could have administrative offices in conjunction with the Sunday school. There could be a day camp program. All such uses would be considered permitted accessory uses.

26. The Zoning Administrator advised that the certificate of occupancy as issued would not encompass schools such as an elementary or a high school.

27. There was no report received from Advisory Neighborhood Commission 4C.

CONCLUSIONS OF LAW AND OPINION:

The intervenor's motion to dismiss the subject appeal has no foundation. The appeal was properly filed. The issues in the case are capable of being judged by the Board. The request for dismissal relates to the intervenor's contention that the appellant had presented no appropriate grounds in support of the appeal. Such is an argument to be dealt with on the merits.

The sole issue before the Board in the subject appeal is whether the Zoning Administrator properly applied the Zoning Regulations when he approved for zoning purposes an application for a certificate of occupancy to use the subject premises as a "Religious Education Building/Sunday School." The Zoning Regulations are clear that a "Sunday school building" is a use permitted as a matter-of-right in an R-1-B District, under Paragraph 3101.33. The key issue for determination is thus whether the proposed use of the building as described to the Zoning Administrator constituted a "Sunday school building."

As there is no definition in Section 1202 of the Regulations for a "Sunday school building," the Zoning

Administrator properly made reference to the Websters Unabridged Dictionary. Notes that that definition cites a school operated on Sunday, the Zoning Administrator testified that he believed the Regulations did not intend to preclude schools that offered religious education and training on other days of the week. The Board concurs. The literal reading of the definitions would prevent those religions which celebrate holidays on days other than Sunday from conducting religious education activities on those days. The Board concludes that the Regulations do not intend that result. Consequently, the Board concludes that a building whose primary purpose is for religious education is a use permitted as a matter-of-right in an R-1-B District, even if such activities occur on days other than Sunday.

The Board is mindful of the fact that the plans submitted with the application for a building permit described the building as a "Family Life Center." The Board notes that regardless of what an applicant calls a proposed building or use, the Zoning Administrator must determine whether that building or use fits within one of the categories specified in the Zoning Regulations. The Zoning Administrator testified that he questioned the minister of the applicant church as to what use was intended for the property. The Board concludes that the Zoning Administrator exercised proper diligence in evaluating the proposed use, and properly determined, based on the information before him from the applicant, that this proposed use was a Sunday school and thus permitted.

The Board notes that the appellant spent much of its time and attention focused on events and materials that occurred or were produced after the certificate of occupancy was approved. On many occasions during the course of the hearing, the Board advised the appellant that the Board would limit its determination to whether the Zoning Administrator was correct in the action he took. Allegations of subsequent activities or potential violations that may have occurred are not properly before the Board in this matter. Such allegations or violations should be brought to the attention of the Zoning Administrator for appropriate enforcement of the Regulations. Following investigation, if the Zoning Administrator determines that no violation of the Regulations exists, then the appellant may bring another appeal on that issue.

Accordingly the Board determines that the Zoning Administrator committed no error in approving for zoning purposes the application for a Certificate of Occupancy to use the subject premises as a "Religious Education Building/Sunday School." It is therefore hereby ordered that the appeal is denied and the decision of the Zoning Administrator is upheld.

VOTE: 3-2 (Walter B. Lewis, Douglas J. Patton, and William F. McIntosh to deny the Appeal, Connie Fortune and Charles R. Norris opposed to the motion).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

JUL 13 1983

FINAL DATE OF ORDER: _____

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 SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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