

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13776, of Rhema Christian Center, pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Paragraphs 3101.41 and 3101.42 to use the first and second floors and basement of the subject premises as a day school for eighty students and six teachers in an R-2 District at the premises 4915 Sargent Road, N.E., (Square S-3982, Lots 24 and 29).

HEARING DATES: June 23 and August 11, 1982
DECISION DATE: September 1, 1982

FINDINGS OF FACT:

1. As originally filed and advertised for public hearing, the application sought a special exception under Paragraph 3101.42 for a day school and a variance from the off-street parking requirements of Sub-section 7202.1 to use the first floor and basement of the subject premises for forty children and three teachers.

2. At the public hearing of June 23, 1982, the applicant requested permission to amend its application. Counsel had been retained after the application was advertised. The applicant wished to seek an additional special exception under Paragraph 3101.41 to include a pre-school group, to include the use of the second floor of the premises in addition to the first floor and basement, and to include the adjacent lot 24 to serve as play area and for the required parking spaces. The applicant further requested to withdraw the variance from the off-street parking requirements (Sub-section 7202.1) and to increase the maximum number of students to eighty and the maximum number of teachers to six, from the original request of forty students and three teachers. The opposition, including Advisory Neighborhood Commission 5A, requested a continuance since the new issues had not been considered in their deliberations. The Chairman determined that the application could be amended, but would have to be readvertised. A new public hearing was set for August 11, 1982, and appropriate notice given.

3. Preliminary to the hearing of the application on its merits, counsel for the applicant requested that the Board rule that the proposed use is an accessory use to the Church use and therefore should be permitted as a matter-of-right. The Chairman directed that the request

would be taken under advisement and referred to the Corporation Counsel for its opinion. The Chairman directed that the hearing on the application proceed on its merits. Subsequently, the Board ruled, based on the Corporation Counsel's opinion, Exhibit No. 66 of the record, to deny the applicant's Motion.

4. The subject site is located at the southeast corner of the intersection of Sargent Road and Delafield Place and is known as premises 4915 Sargent Road, N.E. It is in an R-2 District.

5. Lot 24, on which the Rhema Christian Center, hereinafter referred to as the Center, is located is rectangular in shape and has approximately 5,500 square feet of area with about seventy-five feet of frontage on Sargent Road and seventy-four feet on Delafield Place. The church and auxiliary building face Sargent Road and consist of two row buildings converted to church use and an old free standing house, in all occupying about eighty percent of the lot.

6. The Church is surrounded by residential uses in an R-2 District. To the west, north and east of the site are semi-detached single family units. To the south is a single family dwelling under construction. The north side of the rear portion of Lot 29 abuts the rear yards of premises 1227, 1229, 1231 and 1233 Delafield Place on which are located four single family residences.

7. Lot 29, which is located south and east of the Center, was purchased by the applicant after the subject application was filed at the office of the Zoning Secretariat. The southeast portion of Lot 29 is capable of providing 3,000 square feet of play area and six parking spaces measuring nine feet by nineteen feet. The applicant has since filed an application for a subdivision combining Lots 24 and 29 into one record lot.

8. The Center began operating a school as is now proposed in the fall of 1981. The applicant assumed it could do this as a matter-of-right. After being advised by the office of the Zoning Administrator that the school must obtain a certificate of occupancy, the Center ceased operation at the subject site and filed the subject application for relief.

9. The hours of operation of the proposed school would be from 9:00 A.M. to 2:30 P.M. The maximum enrollment was proposed as eighty students, including ten at the kindergarten level and the other seventy in grades one through twelve. At present, the total enrollment is fifty with five students at the kindergarten level. The classes would be located on the second floor of the Center. The

first floor of the Center is an auditorium and would be used for school programs and assemblies. The basement of the Center has several rooms and was proposed to be occupied as the lunch room.

10. The school program proposed would include the standard subjects, such as mathematics, English, social sciences and science, as well as religious instruction. The teaching format is based on the "Accelerated Christian Education" program, which standards are designed to integrate the moral and religious instruction of youth with standard educational subjects. The classrooms would be set up so that each child has his or her own work area in an office style. Students would advance at their own pace and would not be categorized into grades but rather different learning levels. In addition to the regular instruction, field trips would be arranged on Fridays. The students would be transported on the two church buses. Supervisors would attend all tours. When the buses are not in use, they are parked in the Center's driveway which is located south of the Center.

11. The applicant testified that minimal traffic would be generated by the school. In the morning and early afternoon, the parents would drop off the students. The teachers would arrive at the school by car pool, public transportation or would use the six parking spaces provided. Generally, there would be no visitors to the school. The applicant further testified that any visitors could find parking on the neighborhood streets.

12. The applicant conducted a parking survey of the neighborhood to determine the number of parking spaces available during the hours of the school's operation. The survey is marked as Exhibit No. 41(K) of the record. The survey was conducted for five successive days between Monday and Friday, July 26th through 30th, 1982, for cars parked on Sargent Road between South Dakota Avenue and Faraday Place. The survey was conducted between 8:30 A.M. and 10:00 A.M. The results showed that the percentage of capacity for on-street parking ranged from twenty-three percent to thirty-six percent.

13. The Board finds that the parking survey was taken during the summer months when school was not in operation. The opposition argued that no consideration was given to the fact that families may have been on holiday. The Board agrees. Also, the survey is not a traffic survey and does not reflect traffic conditions at an earlier hour when parents might be dropping off the children and what traffic impact might result from any double parking at the drop-off point at the intersection of Sargent Road and Delafield Place. The Board, to this extent, does not find the applicant's traffic evidence as persuasive to support

the applicant's contention that the on-street traffic impact of the school upon the neighborhood would be minimal.

14. The principal of the proposed school testified that the presently enrolled students for the kindergarten level were from the neighborhood. Her belief was based on statements from the children's parents. A list of their addresses, marked as Exhibit No. 58(B) of the record, evidences that none of such students resides within ten blocks of the site, a radius normally applied by the Board absent any other reasonable assumption as to neighborhood boundaries. Most of the students reside at least twenty blocks or a mile away from the site. The Board finds that the enrollment for the kindergarten classes are not limited primarily to children residing in the neighborhood as required under Sub-paragraph 3101.41(e) of the Zoning Regulations. The Board also finds that the applicant sought no variance relief from this section.

15. The school would have no articles of commerce for sale.

16. The Office of Planning and Development, by report dated August 6, 1982, recommended that the application be approved. The OPD reported that the applicant is providing six off-street parking spaces for the school. Under the existing Regulations, four off-street parking spaces are required. The OPD noted that the only traffic generated by the proposed use will be to drop-off and pick-up the children. It was OPD's opinion that there is ample street parking to serve the school during its hours of operation. The OPD further reported that the on-site play area is about 8,000 square feet which seems to be ample play area for the proposed use. The play area abuts some residences, and the OPD was of the opinion that some type of buffer should be provided all around the proposed play area to minimize the impact on the adjacent houses. If such a buffer were to be provided, the OPD was of the opinion that the noise generated by students playing will not impact on the residents of the area. The applicant anticipates that enrollment of children who do not qualify as first graders will be less than five per school year. Since the church serves the neighborhood, the proposed school as an adjunct of the church will also be an integral part of the neighborhood and will be necessary and convenient to the neighborhood. The applicant also anticipates that the small number of kindergarten children who may enroll in the school will come from the neighborhood. The Board, for reasons discussed below, does not concur in the OPD recommendation.

17. There were letters of record and petitions in support of the application. There were witnesses in support present at the public hearing. The grounds for support were that the play area and parking facilities were ample, that

religious training is important for children, that the proposed school use is compatible with surrounding land uses and the school will have no adverse effect on the neighborhood. The Board takes no issue with the teaching goals of the applicant. The Board, for reasons elaborated below, however finds that the proposed school will have an adverse effect in the immediate neighborhood.

18. There were letters of record and petitions in opposition to the application. There were also many witness who testified at the public hearing in opposition to the application. Among the opposition were the ANC Single Member District commissioner, owners of property in the area, the four homeowners of property at 1227, 1229, 1231 and 1233 Delafield Place, the rear yards of which abut Lot 29, on which the parking and play area will be located, and the North Michigan Park Civic Association.

19. The opposition first argued that there was no need for the applicant's proposed school since there are at present five schools which more than adequately serve this area, including Brookland Elementary, Bunker Hill, and Backus Public Schools. There are also two preschools in the area, one at the North Michigan Park Recreation Center at 13th and Emerson Streets, two blocks away and a day care facility at the Faith Church of Christ, 4900 10th Street, N.E.

19. The opposition also argued that the Metropolitan Police Department has already received many complaints about parking in that area. The opposition asserted that the police have indicated that traffic on Sargent Road from 7:00 A.M. to 10:00 A.M. and from 3:00 P.M. to 6:30 P.M. would be hazardous to any school children in that area. In support of this assertion, the opposition cited a letter dated August 11, 1982 from a captain of the Fifth District to Advisory Neighborhood Commission 5A. The letter stated that a check of the Department's computer system indicated that in the last year and one half, there have been two accidents in the 4900 block of Sargent Road N.E. Additionally, as a result of radar utilization, a total of forty-three notices of infraction were issued during the month of May, 1982, for speeding violations. The letter further stated that signs on Sargent Road prohibit through trucks, that several complaints were received concerning large trucks traveling through the area and that the necessary enforcement efforts were undertaken.

20. There were further allegations by the opposition that the school building did not conform to the building, fire and health codes for the District of Columbia, thus making the Center unsafe as a school.

21. The property owners of the premises immediately abutting Lot 29 objected on more immediate grounds. In support of their objections photographs were submitted, marked as Exhibit No. 63 of the record. The grounds of objection of these owners were as follows:

- A. The Center is located too close to residential properties. The noise and activity level of eighty students each day would compromise the privacy and peacefulness enjoyed by these residents. Those schools which are isolated from residential areas are not likely to become objectionable. Such is the case with St. Gertrude's school already located in the neighborhood. Such is not the case with the Center and the residents felt that the existing quality of neighborhood life will be compromised and disturbed.
- B. The Center also plans a playground and accessory parking which is to be located on the lot which is directly behind their properties. They argued that the location of such facilities would severely compromise their privacy. In one instance a living room is twenty-four feet from this lot and has a sliding glass door which opens facing this lot. The residents were in opposition to the location of playground and parking facilities as they would adversely affect the privacy and use of their backyards and living rooms. The neighbors argued that such a location would be objectionable because of noise, traffic, car exhaust, level of general activity, loss of privacy and threatened safety and security of their property.
- C. At present this lot is unsecured, unlighted and unsupervised and has been used by children as a play area. Further, there are no protective or screening walls located on or between the properties. Activity on the playground from the Center's students and any others who would utilize the proposed playground at other times increases the chance of broken windows on surrounding property from balls, rocks, etc. This would increase the cost of the homeowners' insurance. Traffic on the proposed parking lot will aim headlights on the adjoining property at all hours. The Center as a religious organization has several night services each week. The accompanying air pollution from car exhausts will adversely effect health, as the fumes will undoubtedly drift into the properties and homes, which are near the Center property. The Center already cut down all trees near the adjoining property. If the parking lot and/or playground

require asphalt, then there will be additional heat gain on adjoining property, thereby increasing cooling costs. In addition, if the adjoining owners decide to sell their home, a playground and parking lot so close to the property will make the property very difficult to sell. At a minimum, the property value will decrease.

- D. The subject area is a quiet residential area. In addition to the commuter traffic which uses Sargent Road, a school for eighty students and six teachers would considerably increase traffic, noise and the level of general activity as persons arrive and depart from the school. This would seriously disrupt the flow of traffic on Sargent Road and would probably result in school related traffic spilling over into Delafield Place with cars being double parked. The opening of a school implies more traffic by parents, students and staff. This increased traffic, along with already blocked views of the intersection, significantly and adversely affects safety for autos and pedestrians in the neighborhood.

- E. The Center has failed to consult with the community in a timely manner as its plans for expansion developed. Many, if not most, of the members of the Center do not reside in this community. The residents view this application as a potential disruption of the community life being imposed upon it by persons who are not members of the community and who can return to their own quiet and private residential areas.

In a time of declining enrollment and school closings, the residents suggested that the Center purchase one of the many abandoned or closed public schools with existing play and parking areas rather than crowd its community by opening a new school.

22. Advisory Neighborhood Commission-5A by letters of June 21, 1982, August 25, 1982, August 11, 1982, and through testimony at the Public Hearing of August 11, 1982, recommended that the application be denied. The ANC in its letter of August 11, 1982, reported that it supported the community residents in their opposition to the special exception. The ANC reported that petitions have been collected from virtually every home within the immediate vicinity, opposing the grant of this special exception. The ANC argued that the community is best to judge what is in its best interests, and in this case the community had spoken against the application.

23. The ANC noted that in the District of Columbia, before a special exception may be granted the applicant bears the burden of proving that it meets certain delineated standards. In the present case, the ANC contended that granting this special exception would violate the Zoning Regulations as follows:

- A. The ANC argued that the center has failed to establish that it satisfies Sub-Paragraphs 3101.421 and 3101.41(b) of the Zoning Regulations requiring that the school be so located that it would not "be objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions." The ANC reported that the community residents have already been seriously aggrieved by the traffic and parking problems incurred when the subject premises was merely used as a church. This problem was compounded when a day school illegally began to operate on the premises. As the application proposes a substantial increase in the number of students, these problems can only be expected to increase in the future.
- B. The ANC further argued that the petitions submitted in opposition are overwhelming indication of the community's position regarding the "objectionable" nature of the proposed use. It was noted that of the petitions submitted in favor, the vast majority of the signatures are from persons outside of the two hundred foot radius. Of the few names of persons who are within the radius, some of those names are of persons who did not sign the petition and are understandably curious as to how their names came to appear on the petition. The ANC submitted that even one known "questionable" signature is enough to cast doubt on all of the petitions submitted by the applicant.
- C. The ANC argued that the applicant has failed to establish that it satisfies Paragraph 3101.41(c) of the regulations. The proposed use is not reasonably necessary and will be most definitely inconvenient to the neighborhood. Furthermore, it has not been demonstrated that enrollment in the pre-school/kindergarten will be limited primarily to children residing in that area, as is required by the Regulations.
- D. The applicant has failed to establish that it satisfies Paragraph 3101.41(d) which mandates 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 Center has requested permission for eighty children. This means that there must be at least 8,000 square feet of play area located at 4915 Sargent Road. The ANC argued that it is irrelevant that a subdivision request is pending to include the adjoining premises in the same lot and hence use the two lots to get the required space.

- E. The Center bought into an already established low density residential neighborhood. There are other areas of the city already zoned to permit the use for which the Center is now seeking a special exception.

24. The Board is required by statute to "give great" weight to the issues and concerns of the ANC. The Board, in addressing these issues and concerns as well as those of the other opposition, finds as follows:

- A. As to the need for the school, such issue is pertinent only to Sub-paragraph 3101.41(c) relating to a kindergarten and is not relevant to paragraph 3101.42, a private school other than kindergarten or pre-school group.
- B. As to Sub-paragraph 3101.41(c) the Board finds that the proposed kindergarten is not reasonably necessary to the neighborhood in which it is located. The enrollment will not be limited primarily to children residing in the neighborhood. The enrollment for the kindergarten at present is less than five and a review of the addresses of the present enrollees indicates that they live well beyond the immediate neighborhood by ten to fifty street blocks.
- C. The Board notes that a church is permitted as a matter-of-right in an R-2 District. A certain degree of impact on a neighborhood would be associated with any church use. Regardless of the feeling of the opposition, the church use is permitted and the impacts must be accepted. However, when those impacts are magnified by the addition of a school of eighty students as proposed herein, the number of students and amount of traffic and noise rises beyond a level that is acceptable. To that extent, the Board concurs with the opposition and finds that the proposed use would be objectionable because of noise, traffic and number of students.
- D. As to the issues of an invasion of privacy, personal safety and safety of the Center,

security, increases of homeowners' insurance, air pollution, increase in heat bills, lowered property values, the applicant's noncooperativeness and alternative sites, such issues are not dispositive of the subject application under Paragraph 3101.42. None of the opposition has a scenic easement. They knew, or should have known of the risk of their purchase of property abutting or nearby undeveloped land. The issues of personal safety to their residences, insurance, heat bills, air pollution and lowered property values are speculative, problematical and irrelevant to the subject zoning issues. There are other forums or remedies to address these issues. The alleged uncooperativeness of an applicant is a personal matter.

- E. The Center's alleged failure to conform to the building, fire and health codes of the District of Columbia is not a zoning issue and the Board has no jurisdiction over it. Zoning is only one prerequisite to the issuance of a Certificate of Occupancy. The other aforementioned codes must also be addressed in review of the application for a certificate of occupancy.
- F. A church is a use permitted as a matter-of-right. The requested school is permitted as a special exception, requiring BZA approval. When seeking relief through a special exception, the applicant has no burden to establish that other sites might be appropriate for its proposed use, regardless of how acceptable such a choice might be to the opposition.
- G. The Board determines each application on its own merits. The standard to be met in a special exception is conformance with the Zoning Regulations. A single decision of a grant or denial of an application does not set a precedent.
- H. The ANC's allegations as to play area are not correct. Play area is required only for the kindergarten level children. Further, the fact that the play area is not now located on the same lot as the Center is not dispositive of the application under Paragraph 3101.41. It is clear that there is no barrier to the subdivision of the separate lots into one lot. The Zoning Administrator will require same before approving a certificate of occupancy.

- I. What is dispositive of this application is that the Board finds that the proposed use is not in harmony with the general purpose and intent of the Zoning Regulations and will tend to affect adversely the use of neighboring properties. On this issue the Board concurs with the ANC and other opposition.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking two special exceptions, the granting of which requires substantial evidence of compliance with Paragraphs 3101.41 and 3101.42 of the Zoning Regulations, and under Sub-section 8207.2, that the relief can be granted as in harmony with the general intent and purpose of the Zoning Regulations, and will not tend to affect adversely the use of neighboring property.

The proposed kindergarten must meet the requirements of Paragraph 3101.41. The Board concludes that the applicant has not met its burden of proof. As found in Finding Nos. 14, the applicant has not complied with item "c" of Paragraph 3101.41 in that the proposed enrollment does not come primarily from children residing in the neighborhood in which the school is proposed to be located. The small enrollment further evidences that the said program is a use that is not reasonably necessary to the neighborhood. The Board notes that the applicant had never sought a variance from this requirement.

As to the special exception sought under Paragraph 3101.42, the Board concludes that the applicant has not met its burden of proof. Eighty students and six teachers is objectionable to adjoining and nearby property because of noise, number of students and close proximity to residential dwellings. Such conditions would affect adversely the use of neighboring property.

The Board concludes that it has given the issues and concerns of the ANC the "great weight" as required by statute.

Accordingly, for the reasons stated above, it is ORDERED that the application is DENIED.

VOTE: 4-0 (Lindsley Williams and Charles R. Norris to DENY; Douglas J. Patton and William F. McIntosh to DENY by PROXY; Connie Fortune 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: DEC 17 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."