

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13876, of New Mount Carmel Baptist Church, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.42 to use the basement of the subject premises as a Christian school, kindergarten through fourth grade, for sixty students and twelve staff persons in an R-4 District at the premises 4100 Illinois Avenue, N.W., (Square 3241, Lot 810).

HEARING DATES: December 8, 1982 and February 9, 1983  
DECISION DATE: March 2, 1983

FINDINGS OF FACT:

1. The subject application appeared on the preliminary agenda of the public hearing for December 8, 1983. The Advisory Neighborhood Commission 4C requested that the case be continued because the property was improperly posted and the affidavit of posting was untimely filed. The Supplemental Rules of Practice and Procedure before the BZA require that the notice of the public hearing must be posted on the subject property at least fifteen days prior to the public hearing. The filing of an affidavit attesting to the posting of notice must be filed at least five days before the public hearing. The applicant posted the subject property five days before the public hearing, and filed an affidavit of posting one day before the public hearing. The Chairman determined that proper notice had not given. The public hearing on the subject case was continued to February 9, 1983.

2. Advisory Neighborhood Commission 4C also reported that several residents within 200 feet of the subject property had not received notice from the BZA of the pending application. An applicant is required to provide the BZA with the names and addresses of all property owners within 200 feet of a subject property. The Chair determined that there had been sufficient mailed notification to the concerned property owners.

3. The subject application was originally advertised to indicate a variance from the parking requirements. According to Sub-section 7202.1 of the Zoning Regulations, the staff of twelve for the proposed use requires eight on-site parking spaces. By the time of the public hearing,

the applicant was able to provide nine on-site parking spaces, and the parking variance was not required.

4. The subject property is located at the northwest corner of the intersection of Illinois Avenue and Taylor Street, N.W., and is known as premises 4100 Illinois Avenue, N.W. It is in an R-4 District.

5. The site is trapezoidal in shape with 108.04 feet of frontage on Illinois Avenue, 114.14 feet of frontage on Taylor Street, 61.87 feet on the western boundary abutting a public alley and a northern boundary measuring 104.39 feet in depth. The site is improved with a one story plus basement structure housing the New Mount Carmel Baptist Church. The Church faces east onto Illinois Avenue.

6. The applicant is seeking a special exception in order to establish and operate a private school in an R-4 District. The school will be located in the church basement. It will consist of approximately sixty students, grades kindergarten through fourth. The school will be staffed by twelve staff members.

7. The subject site is in an R-4 District which encompasses a large portion of the surrounding area south of Grant Circle. Other residential districts in the area include an R-3 District approximately 550 feet north of the site and an R-5-A District approximately 560 feet northeast of the site. The nearest commercial zone is a C-1 District approximately 450 feet northeast of the site.

8. The subject area is characterized by row dwellings with some interspersed single family detached dwelling units. North, south, east and west of the subject site are row dwellings which are used for residential purposes. The dwellings to the west are separated from the subject site by a public alley. The dwellings to the east and south are separated from the subject site by Illinois Avenue and Taylor Street, respectively. The property immediately north of the subject site is owned by the applicant. The residential structure thereon is used for the Church offices and storage space without a certificate of occupancy. Immediately north of this office property is a residential row dwelling unit.

9. The applicant originally occupied the adjoining residential structure that it now uses for offices. The new Church was constructed approximately ten years ago.

10. The Church is not required to provide any on-site parking. There is a small gravel parking area at the rear of the Church with access from the alley, which could accommodate up to five cars. This parking area and a portion of the existing rear yard is actually a separate irregularly

shaped parcel which the Church purchased ten years ago and combined with its existing holdings. Prior to this acquisition there was no access to Church property from the alley. This latter portion has now been converted to a parking lot to serve the proposed school.

11. Paragraph 3104.35 permits a child development center in an R-4 District as a matter-of-right, provided that the center is located in a building built as a church and continuously used as such. In addition, all play space must be located on the same lot as the center. The kindergarten portion of the private school is subject to licensing by the District of Columbia pursuant to the Child Development Facilities Regulation, Regulation #74-34. The applicant has initiated the licensing procedure and the Department of Human Services has conducted a pre-inspection of the site and facilities. During the pre-inspection of the site and facilities, DHS found some minor physical deficiencies, many of which, according to the applicant, have already been corrected. A final inspection as to other requirements such as play area has not been completed.

12. The presence of the first through fourth grades necessitates the subject special exception request. Pursuant to the requirements of Paragraph 3101.42, if approved by the Board, a private school is permitted in a residential district provided that it is so located that it is not likely to become objectionable to adjoining and nearby properties because of noise, traffic, number of students, or otherwise objectionable conditions.

13. Without a certificate of occupancy, the applicant has operated the school with approximately fifty-seven students. The school began its operations in September, 1981. Although the applicant asserts its educational facility is a completely church-related entity and outside the jurisdiction of governmental regulations, the subject application was filed in order to secure a certificate of occupancy. The applicant intends to operate at the subject site no longer than September, 1983. Another location for the school is presently being sought.

14. The applicant maintains two vans for transporting twenty children. Classes are held between 8:30 A.M. and 2:30 P.M. The facility is open in the morning between 7:00 A.M. and 8:30 A.M. for students to be dropped off. Because parking is restricted in front of the subject Church, the applicant contends that the drop-off and pick-up of children is best suited to that frontage. Both the arrival and the departure of pupils would be staggered so as to minimize any disruption of traffic or traffic hazards. The afternoon pick-ups occur between 2:30 P.M. and 6:30 P.M.

15. The applicant intends to stagger four, fifteen pupil, supervised recreation periods of approximately twenty-five minutes each. The recreation area will consist of the front and side yards of the subject site and the rear yard of the adjacent applicant-owned site to the north. On the east, there is approximately twenty feet between the subject site and Taylor Street. On the west, the area between the applicant's adjacent site and the subject property is approximately ten feet. The nearest residential structure is thirty feet to the north. The nearest residential unit to the south is approximately forty feet from the subject site. The applicant plans to enclose the play area with a six foot chain link fence along the east, west, and south property lines, and a six foot stockade fence along the northern border. A stockade fence was selected for the northern border because this is the only common border with a residential property. The applicant's eastern and southern property lines are adjacent to public streets. The western property line is adjacent to a fifteen foot public alley.

16. The applicant testified that the Church facility has been in the subject area for almost thirty years without any complaints from the area residents. Before opening the educational facility, the applicant requested comments from its neighbors and received no negative responses. According to the applicant, most neighborhood residents have two or three cars per family which multiplies traffic congestion. During services and activities at the subject site, double parking occurs for the drop-off and pick-up of parishioners. The applicant contended that such practices are common and negligible. Further, the applicant predicted no adverse impact on the neighborhood due to excess noise, traffic or otherwise objectionable conditions. The Board, in findings listed below, does not concur with the lack of an adverse impact.

17. The Office of Planning and Development, by report dated November 30, 1982, recommended conditional approval of the application. The OPD reported that traffic impacts are likely to be limited due to the staggered arrival and departure of the students. Further, according to the OPD, the precautions regarding privacy for the adjoining residential property and the reduction of noise levels would appear to abate most expected impact. The Board, for reasons discussed below, does not concur in the OPD reasoning and recommendation.

18. Advisory Neighborhood Commission 4C, by letter dated January 21, 1983, reported that the Commission recommended denial of the subject application. The Commission reported two major concerns:

- A. The Board of Zoning Adjustment and the Office of Planning and Development were not provided with up to date information upon which OPD could make its analysis and Summary Recommendations. The records in the Office of Surveyor designate the subject site with a different lot number than OPD indicated. Also, the subject lot's frontage dimensions listed on the outdated and current building plats indicate that the church building and the adjacent house extend up to the lot line on Illinois Avenue, N.W. which is forty feet from the street curb. This forty feet consists of a twenty-five foot parking and a fifteen foot sidewalk and is public space. On Taylor Street there is a twenty-two foot parking and an eight foot sidewalk. Thus, the play area on the front and Taylor Street side of the church is largely public space.
- B. The School would generate additional noise, shortage of parking and litter. In the testimony at the Commission's meeting of December 6, 1982, the residents, many of whom are retired, expressed concern that the school would likely become objectionable to adjoining and nearby property owners, because of additional noise, traffic, and the number and age of the children and students. They also stated that the appearance of the property would be adversely affected if measures were taken to fence in the property to adequately protect the students and lessen the noise from the play space. The only sizable existing play area on the site is between the sidewalk and the church structure on Illinois Avenue and Taylor Street. The fencing and occupation of public space for private playground purposes as described in the OPD Summary Recommendations is not provided for in Article 4 of the Police Regulations on Occupation of Public Space. The erection of a six foot chain link fence as proposed by the applicant is permitted only on or inside the building restriction line according to the D.C. Building Code Title 5A-1 Sec. 309.1. Such a fence would enclose a play area of only 2000 square feet and be limited to the Taylor Street side of the site. The noise from even a few children playing in such a narrow confined area could be of interest to OPD in making its assessment of potential noise factors. The residents were opposed to the use of this public space for a playground because the neighborhood would be exposed to the noise of sixty children playing three hours a day in this area.

Further, the ANC argued that an increase in the size of the site and the presence of an additional existing structure provide the opportunity for further expansion of the "Christian school Grades 1 to 4" program since there are no specific facility regulations for private schools as there are for child development center programs which care for children five years of age and under.

19. Several area residents testified at the public hearing, that the all-day activities of the school were disturbing to the nearby residents, many of whom are elderly or retired. Such activities occurred between 7:00 A.M. and 8:30 P.M. Children played outdoors in areas adjacent to residential dwellings for at least three hours per day. The drivers who dropped-off and picked-up the children double-parked, used on-street parking needed by neighborhood residents, committed illegal and dangerous U-turns and left motors idling. Many of those vehicles involved had licenses from outside the District of Columbia. Logs maintained by some neighborhood residents on January 24 and 26 were introduced into the record. The logs reflected the aforementioned incidents. One resident testified that he daily picked up the litter deposited by the children. Another resident testified that she witnessed one of the school's students breaking her window. A petition with 160 signatures in opposition to the application was submitted of record. Photos evidencing the scarcity of street parking along Illinois Avenue were submitted. Overall, the opposition was based on the grounds that if the application were granted, the result would be a direct and continuing harm to the neighborhood.

20. The Board is required by statute to give great weight to the issues and concerns of the ANC when such is reduced to writing through a recommendation. In addressing these issues and concerns, as well as those of the other opposition, the Board finds that it concurs with those issues such as noise, traffic, and number of students. The Board finds that such issues now constitute objectionable conditions that create an adverse impact on the use of neighboring properties. The Board finds that these issues alone are dispositive of the application. The Board need not concern itself with the further issues of fencing having an adverse affect on the appearance of the site. The Board notes however none of the opposition has a scenic easement on the Church property. As to the further expansion of the school, such is a matter that would require the Board's approval.

#### CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof that the applicant has complied with

the requirements of Sub-section 8207.2 and Paragraph 3101.42. The Board concludes that the applicant has failed to meet its burden of proof. Based on Findings No. 18, 19 and 20, the subject facility, as presently operating, has proven objectionable to the neighboring residents in regard to noise and traffic conditions. The Board further concludes that the continuing operation of the subject use will increasingly exacerbate the present objectionable conditions. The subject use will not be in harmony with the general purpose and intent of the Zoning Regulations and will adversely affect the use of neighboring property. The Board also concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that this application is hereby DENIED.

The Board is also aware that the applicant has been using the building to the north without a valid certificate of occupancy. The Board adminishes the applicant to desist such activity.

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

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:

JUL 28 1983

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."

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