GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14018, of Federated King's Daughters, as amended, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-paragraph 3102.425 to use the subject premises as a community residence facility for eight residents where there is another such facility with five or more residents within 500 feet in an R-4 District at premises 1301 Emerson Street, N.W., (Square 2807, Lot 1).

HEARING DATES: September 14 and November 9, 1983
DECISION DATE: December 7, 1983

FINDINGS OF FACT:

1. The application was originally scheduled for the public hearing of September 14, 1983. The applicant requested a continuance to enable it to submit documents which had not been timely filed due to the applicant's lack of familiarity with the burden of proof required for the subject special exception and the Rules of Practice and Procedure before the Board. The Chairman granted the request, and the application was continued to the public hearing of November 9, 1983.

2. At the public hearing of November 9, 1983, the applicant amended the application. The number of residents proposed for the subject facility was reduced from ten to eight.

3. A community residence facility for five to eight persons is permitted as a matter-of-right in the R-4 District provided there is no existing community residence facility for five or more persons in the same square or within 500 feet of the proposed facility.

4. A community residence facility licensed for eight persons is located at 4800 Arkansas Avenue, which is two blocks or approximately 437 feet from the subject site.

5. Sub-paragraph 3102.425 of the Zoning Regulations provides that the Board may approve a special exception to permit more than one community residence facility within a square or within 500 feet only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

6. The subject property is located at the northwest corner of the intersection of 13th and Emerson Streets and is known as premises 1301 Emerson Street, N.W. It is zoned R-4.

7. The site is rectangular in shape and contains 7,100 square feet of land area. It is improved with a 2½ story plus basement detached frame structure. Certificates of Occupancy No. B-136802, dated November 10, 1983, and B-129139, dated April 29, 1983, designated the use of the premises as a rooming and boarding house, five guest house bedrooms.

8. The applicant proposes to operate a community residence facility for eight persons on the first and second floors. A resident director will occupy a basement apartment at the subject premises.

9. The resident director will be assisted by one full-time employee and approximately three volunteers per week from the First Church of the Seventh-Day Adventists.

10. The applicant began operation of the subject facility as a rooming house, five guest bedrooms, in 1979. The age and condition of the residents of the rooming house have changed over the years and the facility has evolved into a community residence facility.

11. The proposed increase in the number of residents from five to eight is to meet the increased demand for space in this type of facility which is not being met by existing facilities in the area.

12. The residents of the existing facility, ranging in age from the 70's to the 90's, are ambulatory and able to perform the activities of daily living with minimal assistance. Meals and laundry services are provided on the premises.

13. Trash is removed from the site by a private company approximately twice per week. Since meals and laundry services are provided at the subject premises, supplies are purchased by the director and brought to the site in much the same manner as would occur for a single family use of the premises.

14. One off-street parking space is provided at the rear of the site. The proposed facility is not expected to increase traffic or parking demand. The director of the facility will reside on the premises. The residents of the facility, because of their age and economic resources, are not expected to drive or own automobiles. The use generates very few visitors.

15. The First Church of the Seventh Day Adventists provides van service to transport the residents of the facility to church and other off-site activities.

16. The subject community residence facility is located on a large lot. Use of the outdoor area by the residents will be for passive recreation and is not expected to generate any undue level of noise.

17. The Office of Planning, in its revised memo dated November 1, 1983, recommended that the requested special exception be approved. It was the opinion of the Office of Planning that the proposed facility will have little or no impact on existing traffic, noise and operations given the elderly population, and the minimal delivery and trash removal requirements of the facility. The Office of Planning was further of the opinion that it is highly unlikely that there will be any significant cumulative adverse impacts on the community, because of the location of two community residence facilities within 500 feet.

18. Attached to the Office of Planning report were the recommendations of other District agencies, as follows:

a. The D.C. Department of Transportation, by memo dated October 26, 1983, reported that the facility as proposed will have a negligible effect on transportation conditions in the area.

b. The D.C. Department of Human Services, by memo dated September 15, 1983, recommended that the special exception be approved. It was the opinion of DHS that the subject facility is stable, improvements have been made and it will not produce a negative impact upon the community.

c. The Chief of Police, by memo dated September 21, 1983, recommended approval of the application. The facility will have a minimal impact on the level of police services provided.

d. The Fire Chief, by memo dated August 26, 1983, reported that the granting of the requested special exception will not adversely effect the operations of the Fire Department.

19. At the Board's request, the applicant submitted a letter from the Fire Inspector dated March 8, 1983, indicating that the facility complies with the applicable life safety provisions.

20. Advisory Neighborhood Commission 4C, by amended report dated October 25, 1983, and by representative at the public hearing, unanimously supported the application. The

ANC was of the opinion that the applicant complies with all the criteria of Paragraph 3102.42 of the Zoning Regulations.

21. The Carter Barron East Neighborhood Association, by letter dated August 30, 1983, supported the application. The Association's support was based on the need for the facility, the improved exterior maintenance of the premises, and the petition evidencing the support of over thirty residents of the immediate area. The CBENA recommended that approval be limited to operation of the facility by the applicant.

22. There are numerous petitions and letters of record supporting the granting of the requested special exception from area residents and community churches. The general basis for the support of the application was that the proposed facility provides a needed service, the facility is well-maintained, no adverse impacts have been generated by the existing facility, and the facility blends well with the residential nature of the area.

23. The Board notes that the Advisory Neighborhood Commission report applied all of the criteria of Paragraph 3102.42. The application as amended, requests permission to establish a community residence facility for eight residents. Therefore, only Sub-paragraph 3102.425 is applicable to the subject case.

24. Based on the reports of the Advisory Neighborhood Commission, District agencies and residents and community churches in support of the application, the Board finds that the cumulative impact of the proposed facility would be negligible and would not have an adverse impact on the immediate neighborhood.

25. There was no opposition to the application present at the public hearing.

26. The record contains two letters in opposition to the application from nearby property owners. It is not clear that the letters apply to the subject application in that one letter appears to be in reference to a community residence facility at some location other than that which is before the Board and the other letter objects to the impacts of an increase to ten residents. The opposition was of the opinion that the proposed use would not be in keeping with the character of the surrounding residential neighborhood.

27. The Board does not concur with the concerns of the opposition. The proposed facility is a permitted residential use. The record evidences substantial neighborhood support for the proposed facility. The opposition does not appear to clearly apply to the subject application in terms of location or proposed number of residents.

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 the requested special exception, the applicant must demonstrate, through substantial evidence, compliance with Sub-paragraph 3102.425 of the Zoning Regulations. The Board concludes that the applicant so complies. The cumulative impact of the two facilities within 500 feet will not be objectionable. The facilities are substantially separated and the impact on traffic, noise and operations generated by the proposal will be negligible.

The Board further concludes that the application can be granted as in harmony with the general purpose and intent of the Zoning Regulations, and that the relief sought will not tend to adversely affect the use of neighboring property. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Carrie L. Thornhill and Douglas J. Patton to grant; Charles R. Norris not present, not voting).

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

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

FINAL DATE OF ORDER: MAR - 5 1984

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14018order/LJP4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14019, of Amy Goldstein and Ruth Small, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 4101.41 to operate a parking lot and for a variance from the prohibition against all day commuter parking (Sub-paragraph 4101.413) in an SP-2 District at the premises 1114-16 13th Street, N.W. (Square 247, Lot 852).

HEARING DATE: September 21, 1983
DECISION DATE: October 5, 1983

FINDINGS OF FACT:

1. The subject property is located on the west side of 13th Street between L Street and Massachusetts Avenue, N.W. and is known as premises 1114-16 13th Street, N.W. It is zoned SP-2.

2. The subject site is in the process of being sold by the current owners. The sale is not contingent upon the BZA approval.

3. The applicants requested permission to continue the parking lot use for approximately three and one half years, until May 24, 1987. This request was based upon the Zoning Commission Order No. 394, effective May 6, 1983, which amended the Zoning Regulations to allow the continuance of a parking lot for six years after the expiration of the certificate of occupancy, which was in effect on October 5, 1978. In this case, that certificate of occupancy expired on May 24, 1981.

4. By Order No. 13694, dated July 16, 1982, the Board granted an application to allow the property to be used as a parking lot for all-day commuter parking for a period of one year from the date of that Order.

5. The condition of the lot is currently the same as existed when the lot was approved by the Board pursuant to BZA Order No. 13964. No adverse effects on the immediate area are generated or are likely to be caused by the operation of this lot.

6. The lot is open from 7:45 A.M. to 6:00 P.M. The lot is cleaned on a daily basis. The lot has a capacity for approximately thirty cars.

7. The lot is used for residential parking without charge after 6:00 P.M. There is not sufficient demand for residential parking to operate the lot for that purpose alone. There are monthly lease agreements for all-day parking for approximately nine cars. There has been no demand at this location for short-term parking. Short-term parking is available on both sides of 13th Street where there are parking meters.

8. Uses in the immediate vicinity of the subject lot include a cocktail lounge to the north, offices and an Exxon service station to the south, a parking lot to the west separated from the subject lot by an alley, and a ninety-foot apartment building which provides garage parking to the east across 13th Street. The present character and future development of the neighborhood will not be affected adversely by the subject lot.

9. The facilities on this lot have been found on prior occasions to be non-objectionable to adjoining and nearby property owners. The noise and the traffic generated by cars using this lot is negligible compared to the noise generated by the existing traffic flow along 13th Street, Massachusetts Avenue and L Street. There have been no complaints from surrounding users as to the operation of this lot.

10. The lot complies with the requirements of Article 74.

11. An exceptional condition exists on the subject lot in that the lot is paved and graded in such a way that the only reasonable use of the premises without substantial physical improvements is for parking purposes. In addition, the immediate vicinity of the lot contains few commercial uses that would generate a short-term parking demand.

12. Advisory Neighborhood Commission 2C, by letter of September 13, 1983, advised that it had received no citizen objection to this application.

13. There is no other reasonable interim use of the property. The applicant would suffer a financial loss if the application is denied. The contract purchaser testified that the site will be developed as soon as market conditions permit.

14. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the record, the Board concludes that the applicant is seeking a special exception and a variance. As to the special exception, the Board concludes that the applicant has substantially met the requirements of Paragraph 4101.41 of the Zoning Regulations. The subject lot was in existence on October 5, 1978, under Board approval. The use is not likely to become objectionable because of noise, traffic or other objectionable conditions due to the location of the subject site on 13th Street between Massachusetts Avenue and L Street and the nature of the surrounding uses. The lot is an interim use of the site and will not adversely affect the present character and future development of the area. The lot is used, in part, for residential parking. The Board concludes that approval of this special exception, as hereinafter conditioned, can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property.

As to the requested variance, the Board concludes that such a variance is a use variance because the relief requested relates to the manner in which the parking spaces will be used. In order to grant the use variance, the applicant must demonstrate that there is an undue hardship arising out of some unique or exceptional condition of the property. The Board concludes that there is no other reasonable interim use of the subject property than the continuation of the subject parking facility. The Board further concludes that there are not sufficient facilities in the area to generate a demand for short-term parking and that restriction of the use of the lot to other than commuter parking only would create a hardship for the owner. The Board further concludes that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

A. Approval shall be for a period terminating on May 24, 1987.

B. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

C. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

D. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

E. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

F. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

G. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 3-1 (Carrie L. Thornhill, William F. McIntosh and Maybelle T. Bennett to grant; Douglas J. Patton dissenting as to the time period; Charles R. Norris 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: JAN 24 1984

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

14019order/LJP3