

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14024, of William F. and Phyllis A. Briscoe, pursuant to Sub-section 8207.11 and Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3102.45 and a variance from the maximum number of residents (Paragraph 3102.45) to use the subject premises as a youth rehabilitation facility for ten residents in an R-2 District at premises 4400 Eads Street, N.E., (Square 5131, Lot 57).

HEARING DATES: November 9, 1983 and January 18, 1984
DECISION DATE: February 1, 1984

FINDINGS OF FACT:

1. The subject site is located on the northeast corner of the intersection of 44th and Eads Streets, N.E. The site is in an R-2 District and is known as premises 4400 Eads Street, N.E.

2. The subject lot has the shape of a four-sided figure which narrows slightly at its southern end. Its dimensions are 46.62 feet on its south side, 63.04 feet on the north side, 97.06 feet on the west, and 105.93 feet on the east.

3. The site is improved with two apartment structures, one facing on Eads Street at the southern edge of the site and one facing 44th Street at the western edge of the site. The southern structure is the subject of this application. The subject structure is a two story brick residence which originally contained four apartment units. The structure was converted in 1981 to a group home for eight teenage girls. The subject facility is known as the YWCA Tower.

4. The reconfiguration of the converted building included the removal of the kitchen in the upstairs apartments, which are now used as sleeping quarters. The first floor apartment on the west is used as a kitchen, dining room and laundry room. The first floor apartment on the east is used as office space. No structural alterations were made.

5. There is access to and from the subject site through Eads Street on the south and through 44th Street on the west. The public alley at the north of the site provides

access to the apartment structure on the northwest portion of the site.

6. The subject square and the surrounding area are developed with single-family detached, semi-detached, and row dwellings. The subject site is located at the western edge of an R-2 District. Across 44th Street on the west is an R-5-A District.

7. The subject dwelling is owned by the applicant and leased by the Y.W.C.A. of the National Capitol Area, hereinafter the YWCA, as a group home for eight girls aged fourteen to eighteen years, who have been adjudicated by the D.C. Courts as Persons In Need of Supervision, hereinafter referred to as PINS. The YWCA has a contract with the D.C. Department of Human Services to provide a twenty-four hour group home facility to committed female PINS. The facility is funded by DHS according to the terms of this contract. The eight residents are supervised on a twenty-four hour basis by a staff that has training and experience in working with troubled teens. The staff works in shifts to provide twenty-four hour coverage. The facility's director is Ms. Norlishia Jackson, who represented the YWCA at the BZA public hearing.

8. The YWCA Tower facility provides the eight residents with an opportunity to receive individual, group, vocational and spiritual counseling in a home-like setting. It also provides for them the basic necessities of food, clothing, shelter and caring persons.

9. The residents of the group home all attend school during the day in the neighborhood. During the summer, they are employed at summer jobs, are enrolled in programs or act as volunteers. None of the residents drive cars. All visiting hours are scheduled and residents have a curfew for evening hours. Activities of the YWCA Tower include gospel concerts, the police choir and ushering at community events.

10. The subject facility has been operating in the District of Columbia for approximately ten years. In 1981, the facility became established at its present location, pursuant to BZA Order No. 13504 which was dated June 18, 1981. Order No. 13504 granted a special exception to change a nonconforming use from an apartment house of four units to a rooming and boarding house (group home) for eight girls. This change of nonconforming use provided a reduction in the nonconformity of the subject property from an R-5-A use to an R-4 use.

11. Subsequent to the approval for a group home granted in 1981, the Zoning Commission amended the Zoning Regulations to create the use of a community based residential facility.

The subject home fits into the youth rehabilitation home sub-category of a community based residential facility.

12. For the period of January 1, 1983, through December 31, 1983, the YWCA had a contract with the Department of Human Services to provide financing to the subject group home. The number of residents established at that time was eight. When that contract was due to expire, the DHS had begun issuing 1984 contracts for group homes that would accommodate ten female PINS rather than eight. The DHS was attempting to place the increase in the number of PINS among existing homes. This policy would provide for more cost-effective care and supervision of the PINS.

13. In response to the Department of Human Services' request that bidders submit proposals to accommodate ten female PINS, the YWCA Tower had its facility evaluated by the D.C. licensing authorities. The inspectors found that the facility met the licensing requirements for accommodating ten residents.

14. The applicant now proposes to establish a youth rehabilitation home for ten residents at the site of the existing home for eight residents. The site is in an R-2 District which permits a maximum of eight residents in a youth rehabilitation home. In order to establish the proposed home, the applicant must obtain a special exception under Paragraph 3102.45. In order to increase the number of residents to ten, the applicant must obtain a variance from the use provisions of Paragraph 3102.45.

15. The Board is authorized to grant special exceptions where in the judgement of the Board such special exceptions will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps.

16. The Board of Zoning Adjustment has the power to grant a use variance pursuant to Paragraph 8207.11 of the Zoning Regulations. The granting of a use variance requires that there be an undue hardship upon the owner arising from a unique or exceptional condition of the property which precludes the property from being reasonably used for a purpose for which it is zoned. The granting of the use variance must not cause a substantial detriment to the public good nor impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and maps.

17. Paragraph 3101.45 provides that a youth rehabilitation home for one to eight persons can be established in an R-2 District, provided that:

- A. There shall be no other property containing a community based residential facility for five or more persons in the same square and no other property containing a community based residential facility for five or more persons within a radius of 500 feet from any portion of the subject property.
- B. There will be adequate, appropriately located and screened off-street parking to provide for the needs of occupants, employees and visitors to the facility.
- C. The proposed facility shall meet all applicable code and licensing requirements.
- D. The facility will not have an adverse impact on the neighborhood because of traffic, noise, operations or the number of similar facilities in the area.
- E. The Board may approve more than one community based residential facility in 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. The Board shall not approve more than one youth rehabilitation home, adult rehabilitation home or substance abusers home in a square or within 500 feet of each other.
- F. The Board shall submit the application to the Office of Planning for coordination, review, report and impact assessment along with reports in writing of all relevant District departments and agencies, including but not limited to the Departments of Transportation, Human Services and Corrections.

18. The applicant has been asked by DHS to increase the number of residents from eight to ten because of a District of Columbia Superior Court decision to deinstitutionalize children. In attempting to disperse institutionalized children throughout the D.C. community, the Department of Human Services has experienced difficulty in finding enough suitable facilities to accommodate all the PINS. The subject facility was chosen as a possible location for two additional PINS since it had the physical accommodations.

19. The YWCA argued that there would be no adverse impact on the neighborhood if the number of residents at the subject facility were increased from eight to ten. There would be no more noise and no more traffic. The effect of the increase would be to save money for the District of Columbia government through cost-effectiveness. No

additional staff would be provided to service ten girls. The food and transportation budget would be increased to accommodate the increase in the number of residents.

20. The YWCA further argued that the facility has a positive impact on the lives of its residents and on the surrounding neighborhood. One of the residents who was a potential drop-out was voted an award by Kelly-Miller Jr. High School as the most improved student. She is now at Woodson High School. Two former residents who were potential drop-outs are now in their senior year of college. All of the residents work during the summer and attend school during the winter. In the evenings, the residents have supervised activities. In addition to providing a refuge for troubled teens, the subject facility has rehabilitated an old apartment building that formerly had a negative impact on the neighborhood.

21. The YWCA argued that by increasing the number of residents from eight to ten, there would be no change in the type of use. The residents would still be PINS and the program offered to them would still consist of residential treatment, counseling, job training and personal guidance. Only the number of residents would be changed.

22. The Board finds that the proposed increase in the number of residents constitutes a change in use. The Zoning Commission in establishing the regulations for community based residential facilities made a policy decision to limit the number of residents in a youth rehabilitation home according to the zone in which it is located. The R-4 and R-5 Districts permit a higher number of residents than the R-2 District permits for a youth rehabilitation home. The R-2 District is intended to be a single-family district, and the number of residents allowed was reduced to the size of a large family. The Zoning Commission did not provide an exception to increase the density beyond eight residents in an R-2 facility.

23. The Board finds that the order in Case No. 13504 is still in effect and that the order has no time limit for authorization of the operation. Should the subject application No. 14024 be denied, the applicant would still be able to operate the facility with eight residents. The use still meets the criteria of that order, as established by a recent inspection.

24. The Board finds that there are other permitted uses for the subject property which are possible and reasonable for the applicant's utilization of the subject property. The Board finds that these permitted uses include the existing residence for eight PINS or a rooming and boarding house.

25. The Office of Planning, by memorandum dated November 2, 1983, recommended that this application be denied. The Office of Planning was of the opinion that the applicant had not carried its burden of proof under Paragraph 8207.11 regarding a use variance. Equally important, the extremely negative findings by the Police Department regarding problems at the premises indicated that approval would be inappropriate or at least premature. The Board concurs with the reasoning and the recommendations of the Office of Planning.

26. The D.C. Metropolitan Police Department, by report dated September 8, 1983, recommended that approval of the application be held in abeyance until such time as the owner/operator can demonstrate to the Board a plan which will dramatically reduce the number of calls for police service at the residential facility located at 4400 Eads Street, N.E. The Police Department reported that in order to determine what impact the proposal would have, a cursory review was made of the Department's records regarding the number of times the police responded to calls for service to 4400 Eads Street, N.E., from January 1, 1983, to August 31, 1983. This survey revealed that the Department has responded to the facility seventy-seven times since January 1, 1983, including calls for missing persons, disorderly, simple assault, and various others. This location also had the greatest number of calls for service in the surrounding four block area. The 500 block of 44th Street, the 500 block of 45th Street, the 4400 block of Grant Street, and the 4400 block of Eads Street, N.E., excluding calls for service to the residential facility, had a combined total of eleven calls for service during the same time period. Based on the above statistics, and based on the number of calls for service to other similar community residential facilities located throughout the District of Columbia, it appeared to the Police Department that the applicant may have a problem supervising youthful residents. This problem will continue to exist if the facility is allowed to increase its occupancy, and the owner/operator does not take steps to ensure better supervision. The Board concurs with the reasoning of the D.C. Metropolitan Police Department.

27. The D.C. Fire Department, by memorandum dated September 20, 1983, reported that the relief requested would not adversely effect the operations of the Fire Department.

28. The D.C. Department of Transportation, by memorandum dated October 26, 1983, reported that its analysis indicated that the proposed expansion will have a negligible effect on transportation conditions in the area. As to the street system the DOT reported that 44th Street is a two-way, thirty-four foot wide local street with an average daily traffic volume of 4,800 vehicles near the site. Unrestricted

parking is permitted on both sides of 44th Street. Eads Street is a thirty foot wide local street. Unrestricted parking is permitted on both sides at all times. Three Metrobus routs, the V4, X5 and U6, run along Benning Road, 2,000 feet from the site, every seven to forty minutes. The Benning Road station on Metrorail's Blue Line is 2,800 feet from the site. The staff totals nine persons, no more than two of whom drive to the site during any one duty shift. None of the residents are permitted to own a car. The Board concurs in the DOT analysis and recommendation.

29. Advisory Neighborhood Commission 7D filed no recommendation on the application.

30. There was no opposition to the application of record nor was their support of record.

31. At the public hearing of November 9, 1983, the YWCA attempted to refute or clarify some statements in the Police Department report. The representative testified that she had not reviewed the Police Department report or the report of the Office of Planning. The representative attempted to testify to conversations that she had with the Police Department and meetings with neighbor residents all of whom were in favor of the application. The Board noted that no such evidence had been submitted to the record and that such evidence was unverifiable hearsay.

32. The applicant offered no probative evidence in support of the use variance to establish that the subject property because of a hardship inherent in the property is precluded from reasonable use for a purpose for which it was zoned. The Board finds that in the absence of such evidence the requested special exception relief also fails.

33. The Board expressed concern that the lessee failed to review the record prior to the public hearing and that the applicant was unable to address these concerns expressed by D.C. Government officials. The Board continued the application for a further hearing on January 18, 1984, limited to two issues, namely:

- a. Testimony of a representative of the Metropolitan Police Department and cross-examination thereof.
- b. Further evidence of the applicant in support of the use variance.

34. The YWCA representative failed to appear at the public hearing of January 8, 1984. Upon the staff's telephone inquiry, the lessee advised that she was not pursuing the matter.

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 use variance and a special exception to establish a youth rehabilitation home for ten residents in an R-2 District. The granting of a use variance requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot reasonably be used for the purpose for which it is zoned. The Board must further find that the relief request 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 maps. The granting of the special exception requires a showing through substantial evidence that the proposed use satisfies all requirements of Paragraph 3102.45 and Sub-section 8207.2 of the D.C. Zoning Regulations.

The Board concludes that the applicant has not met this burden of proof. There is no exceptional condition in the size, shape or topography of the subject property that prevents it from being used for its permitted R-2 residential purposes. There is no hardship to the owner of property from any condition inherent in the property. A permitted use exists and can continue indefinitely under the change of nonconforming use from apartment house to a group home for eight residents, granted in BZA Order No. 13504, dated June 18, 1981.

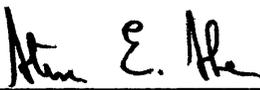
The Board further concludes that increasing the intensity of the subject use from eight to ten residents would have an adverse impact on the surrounding neighborhood and on the public good as reflected in the report of the D.C. Metropolitan Police Department. This report was not refuted by substantial evidence from the applicant or from neighbors.

The Board concludes that the subject property may continue to be put to a permitted R-2 use. The Board also concludes that granting this use variance to operate a youth rehabilitation home for ten residents in an R-2 District cannot be done without substantial detriment to the public good and substantial detriment to the intent and purpose of the zone plan. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-0 (Walter B. Lewis, William F. McIntosh and Douglas J. Patton to deny; Carrie L. Thornhill not voting, having recused herself; 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
Executive Director

FINAL DATE OF ORDER: JUN 27 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."

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