

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14156, of Rhema Christian Center, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.42 to use the first and second floors and basement of the subject premises as a private school for eighty students and six teachers in an R-2 District at the premises 4915 Sargent Road, N.E., (Square S-3982, Lot 31).

HEARING DATE: July 18, 1984
DECISION DATE: September 5, 1984

FINDINGS OF FACT:

1. The subject site is located on the southwest 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.

2. The subject lot contains approximately 24,000 square feet in area and is irregularly shaped.

3. The site is developed with an existing church building and a major addition to the church which will be devoted to other church related activities not associated with the proposed school.

4. West of the site is Sargent Road, which is a four lane right-of-way having two lanes for curb parking. West of Sargent Road there are semi-detached residential dwellings in the R-2 District. North of the site is Delafield Place on both sides of which are located semi-detached residential dwellings in the R-2 District. The church property abuts the rear yards of several of these dwellings. The church property is at a higher grade level than these properties which have rear retaining walls. There is a six foot high stockade fence along the church's property line at this point. East of the site, the property abuts a sixteen foot wide public alley, residentially developed property, and property of the St. Gertrudes Private School. The subject site continues to abut St. Gertrude's property on the south as well as a lot occupied by a single family detached dwelling which fronts on Sargent Road. The primary housing types in the area of the subject premises are detached and semi-detached dwellings reflective of its predominant R-2 zoning. Sargent Road intersects with South Dakota Avenue

one long block south of the site and with Eastern Avenue six blocks to the north.

5. The applicant is requesting permission to operate a private school for children ages five to sixteen at the subject premises. The applicant's school is presently operating at Faith United Church of Christ located at 4900 Tenth Street, N.E. approximately three blocks from the subject Rhema Christian Center.

6. The Board, in BZA Order No. 13776, dated December 17, 1982, denied the same applicant the same relief for the same use of the subject premises. In that application, the application also sought a special exception under Paragraph 3101.41 to establish a kindergarten class. That relief was denied for failure to meet the burden of proof. The private school relief was denied since the Board concluded that the number of students and staff would be objectionable to adjoining and nearby property because of the number of students, noise and close proximity to residential dwellings.

7. Paragraph 3101.42 of the Zoning Regulations provides that a private school may be established when it is so located that it not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions and that ample parking space, but not less than that required in Article 72 of these regulations, is provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

8. The applicant proposes a projected maximum enrollment of eighty students on site. The school, which is presently operating in another facility, has an enrollment of fifty-six students. The school intends to start by shifting the existing fifty-six children to the proposed site and then increase enrollment upon demand, not to exceed eighty. The students entering the building each morning will immediately assemble in the existing auditorium.

9. On the first floor of the subject structure is the auditorium which has a capacity for 299 persons. The auditorium will be used for assemblies and school programs. The second floor will contain the classrooms or "offices." The basement will be used 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 a church bus. Supervisors would attend all tours.

11. The school's on-site activities will be confined to the interior of the building. The students will not congregate on the outside of the building before or after school hours. The students will be escorted off-site to a public playground one block south of the site for organized recreation. The subject church building is constructed of concrete blocks with a stucco facing. The windows to the building will be sealed as the building climate will be controlled with central heating and cooling. There is also a six foot high wooded stockade fence which separates the rear and side yards of the subject property from its closest residential neighbors to the east on Delafield Place.

12. Approximately forty percent or thirteen students use public transportation for travelling to and from school. The applicant expects the number of students who will use public Metrobus transportation to continue at the proposed site. There are four Metrobus stops located within a block and a half of the proposed school.

13. Parents dropping students off or picking them up will do so from the Sargent Road curb adjacent to the church's entrance. The drop-off and pick-up times will correspond with the schools hours of 8:30 A.M. to 2:30 P.M. About fifteen cars will be used to drop-off/pick-up the students.

14. Article 72 of the Zoning Regulations requires that an elementary through junior high school provide off-street parking at a ratio of "Two for each three teachers and other employees except custodial personnel." The applicant proposes that six teachers will be present. Therefore, four parking spaces are required. The applicant's site plan shows five parking spaces on-site. Most of the staff arrive by car pool and public transportation. The others may use the parking spaces provided.

15. The applicant stated that there will be few visitors to the site. The applicant produced no substantive evidence on school related activities that would bring parents and friends to the site for such school related activities.

16. The Office of Planning, by report dated July 11, 1984, recommended that the application be approved with conditions. The Office of Planning noted that it had given great attention to the adjacent and neighboring residential properties which would be directly affected by any objectionable conditions generated as a result of the school's

operation. The Office of Planning was concerned with the cumulative affect the school would have on the community when considered in context with the impacts of other church activities. The Office of Planning recommended the following conditions:

- A. The applicant shall comply with the recommendations of the Department of Public Works, discussed below. The applicant shall provide the Board with a detailed site plan showing the compliance with the DPW recommendation. The plan shall also show landscaping so as to effectively screen all parking and driveway areas from the adjacent residential properties.
- B. The school hours of operation shall not exceed from 8:30 A.M. to 2:30 P.M.
- C. The use shall be limited to sixty students, aged five to sixteen years.
- D. Approval shall be limited to a period of one year.
- E. The six foot high wood stockade fence running along the eastern side of the property which separates the subject site from residentially developed properties on Delafield Street shall be maintained.
- F. There shall be no on-site outdoor recreation or play area.
- G. No other church activities shall be conducted on-site during the hours of operation of the school.
- H. All dropping-off and picking-up of children shall be from the church's entrance on Sargent Road, except by way of the rear parking area.

The applicant was agreeable to the conditions listed by the Office of Planning. The Board, for reasons discussed below, does not concur with the conditional recommendation of the Office of Planning.

17. The Department of Public Works (DPW), by memorandum dated July 6, 1984, reported that Sargent Road is a minor arterial with a paved width of forty-four feet and an average daily traffic volume of 9,360 vehicles in the vicinity of the site. Parking is unrestricted on both sides of the street. Delafield Place is a two-way local street with a paved width of thirty-four feet. Parking is unrestricted except along the south curb adjacent to the church, where parking is prohibited. The site is served by three

Metrobus routes, the E2, E3, and E5 which pass along Sargent Road.

18. As to the impact of the proposal on parking, the DPW reported that the applicant proposes to provide five off-street parking spaces to service the site. The spaces will be accessible from the fifteen foot public alley at the rear of the existing church building. Since a small number of teachers and staff will be using the spaces, the stacked parking arrangement depicted on the applicant's site plan would be workable. The DPW was of the opinion that the applicant should be required to provide ample screening to shield the neighborhood residences from the school parking area.

19. As to the impact of the proposal on traffic, the DPW reported that the opening time of the school, 8:30 A.M. coincides with the A.M. peak traffic hour on Sargent Road. The DPW was of the opinion that, in order to prevent traffic congestion and safety hazards during the morning rush hour on Sargent Road, an on-site pick-up/drop-off and turnaround area should be provided at the school. Such an arrangement could be accommodated in the vacant area in front of the new church addition shown on the applicant's site plan. Access to the pick-up/drop-off area would be from Sargent Road. A parking space for the church bus, now parked in the existing driveway from Sargent Road, could also be included in the layout of this area. The applicant should be directed to coordinate the design of the pick-up/drop-off, turnaround, and parking arrangement with the Department of Public Works to ensure that the plans meet the Department's standards of safety and maneuverability. The applicant was agreeable to the conditions of the DPW. The Board appreciates the concerns of the DPW and its recommendations but for other reasons discussed below must deny this application.

20. Advisory Neighborhood Commission 5A, by letter of July 10, 1984, and at the public hearing, reported that it voted to support the citizens of the single member district in which the subject property is located and the North Michigan Park Civic Association in their long-standing opposition to the expansion of the student/teacher activities at Rhema Christian Church. The ANC noted that, since the BZA had formerly denied the application for forty students and three teachers, neighbors questioned how the BZA could consider approval when both the number of teachers and students had doubled. The ANC attached to its report a petition in opposition to the application which contained 133 signatures.

21. The Board finds that the ANC is in error as to the subject matter of the previously mentioned BZA Order No. 13776. In that application, as amended, the applicant proposed the same number of students and staff as is now

proposed, namely eighty students and six teachers. The Board also finds that ANC 5A did not make its own recommendation on the subject application but rather adopted the concerns of the single member district and those of the North Michigan Park Civic Association.

22. 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 religious training is important for children and, that the proposed 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 affect in the immediate neighborhood.

23. 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, two homeowners of property at 1227 and 1229 Delafield Place, the rear yards of which abut the subject Lot 31 and the North Michigan Park Civic Association.

24. The opposition argued that there was no need for the proposed school since there were at present five schools to adequately serve the area. 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.

25. The opposition argued that the Center has failed to establish that it satisfied Sub-Paragraphs 3101.421 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 community residents testified that they have already been seriously aggrieved by the traffic and parking problems incurred when the subject premises was used as a church. This problem was compounded when a day school illegally operated on the premises. As the application proposes a substantial increase in the number of students over the illegal use, these problems can only be expected to increase in the future.

26. Other opposition argued that the Center seeks to establish its school in 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. 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. Also, the premises of the school would lower their property values.

27. The Center did not 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. The opposition argued that a precedent would be set whereby others could invade their neighborhood with their individual projects. 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.

28. The property owners of the premises immediately abutting Lot 31 objected on more immediate grounds. 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 to provide parking which is to be located on the lot directly behind their properties. They argued that the location of such facilities would severely compromise their privacy. The residents were in opposition to the location of the 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.

29. 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 not relevant to Paragraph 3101.42, a private school other than kindergarten or pre-school group.
- B. 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.
- C. As to the issues of an invasion of privacy, personal safety and safety of the Center, security, air pollution, 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 and lowered property values are speculative and not supported by probative evidence. There are other forums or remedies to address some of these issues. The alleged uncooperativeness of the applicant may affect the applicant's standing in the community, but is not a basis to grant or deny the application.
- D. 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.
- E. 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.

- F. 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.
- G. 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.

30. As to the traffic issue the Board finds that it is more persuaded by the testimony of the residents of the subject area as to traffic conditions than by the report of the DPW. The residents experience daily the traffic impact in their neighborhood. The report of the DPW is based on a single visit to the site. Regardless of the fact that the applicant has agreed to comply with the recommendations of the DPW, the Board is not persuaded that even that compliance will solve the problems. There are other school related activities involving parent participation and visitors to the site. The applicant is sponsoring the proposed school project. The Board finds that there is strong evidence that the Center has not been able to control its church programs. There is abundant evidence in the record that the church has disregarded complaints from area residents. There is further evidence from the church's own observations that there has been double parking on the streets, blocking of private driveways and heavy use of parking spaces otherwise used by the neighboring residents. Conditions have not changed since the time of the prior application to date. There is little evidence that, as to traffic, the church will monitor any more cautiously the school project than it monitors its other activities.

31. The Board finds that, regardless of the applicant's intent to permit no on-site recreation and that entrance and exit to the site will be supervised, there will be noise from eighty or even sixty students, ages five to sixteen years. While such noise may be acceptable elsewhere, in this instance where there is a close proximity to residential dwellings such noise creates an adverse affect and is contrary to the intent of the Zoning Regulations for an R-2 District.

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 substantial evidence of compliance with Paragraphs 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.

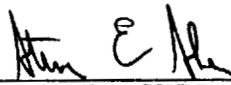
As to the special exception sought under Paragraph 3101.42, the Board concludes that the applicant has not met its burden of proof. Eighty students and six teachers is objectionable to adjoining and nearby property owners because of the inherent traffic, noise and number of students in the close proximity to residential dwellings. Such conditions would affect adversely the use of neighboring property. The Board concludes that the subject application is not significantly different from the prior application, which the Board denied. Consequently, the Board reaches the same conclusion in this case.

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 (Walter B. Lewis, William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to DENY; Douglas J. Patton 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: _____

20 NOV 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."

14156order/LJPA