

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 14402 of Hans Larsen, Chairman, ANC 4A, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the administrative decision of James J. Fahey, Zoning Administrator, dated November 19, 1985 and December 12, 1985, determining that only 23 off-street parking spaces were required for the proposed church-manse (Section 7202) and that the church's parking configuration is in compliance with Sub-sections 7205.2, 7205.3, 7206.6 and Paragraph 7206.73 in an R-2 District at premises 1400 Nicholson Street, N.W. (Square 2723, Parcel 87/436, 87/437, 87/439, 87/441 and 87/444).

HEARING DATE: March 12, 1986

DECISION DATE: March 19, April 2 and June 4, 1986

FINDINGS OF FACT:

1. The appeal was filed on December 18, 1985 pursuant to Section 8102 and 8106 of the Zoning Regulations. It was alleged that the Zoning Administrator fail to apply correctly the parking requirements of the Zoning Regulations which became effective on March 1, 1985 with regard to the computation of the number of required parking spaces for the proposed renovation and new construction and of the approval of the proposed configuration of on-site parking spaces with respect to location and access.

2. The appellant herein is ANC - 4A. As a preliminary matter at the public hearing of March 12, 1986, the Chairperson ruled that the Citizens for Neighborhood Preservation (hereinafter referred to as the Citizens) be permitted to intervene in the appeal and be afforded party status in the proceedings.

3. The property which is the subject of this appeal is located on the south side of Nicholson Street between 14th Street on the east and the juncture of Nicholson Street and Manchester Lane on the west and is known as premises 1400 Nicholson Street, N.W. It is zoned R-2.

4. The property is currently improved with a large single family dwelling. The owner of the property, Iglesia Evangelisa de Apostoles y Profetas, proposes to construct a new church and to renovate the existing building for use as a manse.

5. As to the computation of the number of required parking spaces, the appellant and the Citizens argued that the Zoning Administrator misinterpreted the language contained in Sub-section 7202 of the Zoning Regulations. Specifically, Sub-section 7202.1 of the Zoning Regulations states that a church must provide one parking space "for each ten seats of occupancy capacity in the main sanctuary, provided that where such seats are not fixed, each seven square feet usable for seating or each 18 inches of bench if benches are provided shall be considered one seat."

6. The appellant submitted a copy of a letter from the Zoning Administrator, dated November 19, 1985, which advised that the parking computations for the subject site were as follows:

- a. For the original plans filed on September 4, 1985 indicating 255 fixed seats, 26 parking spaces are required.
- b. For the revised plans filed on October 24, 1985, indicating 230 fixed seats, 23 parking spaces are required.
- c. For the revised plans filed on November 8, 1985, indicating 225 fixed seats, 23 parking spaces are required.

7. The appellant also submitted a letter from the Zoning Administrator, dated December 12, 1985, which advised that the plans for the proposed church/manse had received zoning approval and were undergoing technical review.

8. The appellant and the Citizens further argued that the Zoning Administrator should have applied that portion of the parking provisions which provides for parking computations to be calculated on the seating capacity based on one seat per seven square feet. In support of its argument that the seven square foot provision should apply, the appellant and Citizens cite the phrase "occupancy capacity" contained in the parking requirements. The appellant and the Citizens contend that because the regulations use the term "occupancy capacity", any parking computations should be based on the total capacity or square footage of the main sanctuary, whether or not fixed seating is provided.

9. If the seven square foot rule of the provision were applied, the appellant and the Citizens argued that the capacity of the main sanctuary of the church, minus the pool, storage, mechanical and foyer areas would be 2,752 square feet, providing capacity for 393 seats. Therefore, the appellant and the Citizens allege that 39 spaces would be required for the church and one parking space would be

required for the manse, for a total of 40 required parking spaces.

10. The appellant and the Citizens argued that unless the number of required parking spaces is computed using the total square footage of the main sanctuary, an applicant for a building permit could circumvent the intention of the Zoning Regulations by merely reducing the number of fixed seats shown on plans for review for building permits which in turn would reduce the number of parking spaces required. The applicant could then provide parking spaces based on the number of fixed seats provided and yet provide maximum occupancy of the sanctuary through the use of alternate means, such as the use of folding chairs.

11. As to the configuration of the on-site parking spaces, the appellant and the Citizens argue that the parking layout approved by the Zoning Administrator violated Sections 7205 and 7506 of the Zoning Regulations as follows:

- a. The pull-in parking spaces accessed from Manchester Lane violate Sub-section 7205.3 which states that "required parking spaces shall not be located in the area between a building line and a lot line abutting a street."
- b. The proposed driveways violate Sub-section 7206.7 which requires that a driveway which provides access to required parking spaces for any use other than a one-family dwelling, such driveway shall comply with the following standards:
 1. Not less than twenty-five feet from a street intersection as measured from the intersection of the curb lines extended;
 2. Not less than twelve feet in width if designed for one-way circulation or fourteen feet if designed for two-way circulation; and
 3. Not more than twenty-five feet in width.
- c. The parking space nearest the manse is located in the front yard of the manse, in violation of Sub-section 7205.2 which provides that parking spaces shall be located in the rear or side yard.
- d. All the proposed driveways which access pull-in parking spaces violate Sub-section 7206.6 which requires that "public rights-of-way as well as private walkways and driveways shall be protected from vehicular encroachment from all parking spaces by wheel bumper guards, curbs, guard rails

or screening between the property line and the perimeter of the parking area."

12. The appellant and the Citizens argued that the neighborhood would suffer adverse impacts as a result of the proposed construction as approved by the Zoning Administrator. The manner in which the citizens would be aggrieved is summarized as follows:

- a. Nine currently existing on-street parking spaces will be eliminated to provide access to the proposed on-site parking spaces for the church. The adverse impact of the loss of existing on-street parking is further exacerbated by the existing concentration of approximately fourteen churches in the immediate vicinity of the subject site, none of which is subject to or complies with the off-street parking requirements of the Zoning Regulations. In addition, the potential renovation and occupancy of an existing, currently vacant sixty-unit apartment in the immediate area which provides no off-street parking would place further demands on the on-street parking supply in the area.
- b. By reason of the means of computation used by the Zoning Administrator in determining the number of parking spaces required for the proposed construction, the number of on-site parking spaces provided falls short of the number of parking spaces determined by the appellant to be required, as stated in Finding of Fact No. 9, by fourteen parking spaces.
- c. The proposed project will increase the amount of traffic and noise in the neighborhood caused by the existing proliferation of churches in the immediate area.
- d. The proposed pull-in parking spaces will create traffic congestion and threaten the safety of pedestrians in the neighborhood.
- e. The neighborhood is being "institutionalized" by the conversion of existing large residences into churches, convalescent homes, rest homes and other institutional uses.

13. The original plans for the proposed project, filed on September 4, 1985, showed a church with 255 fixed seats which would require twenty-six parking spaces. That set of plans was disapproved by the ZA because the property had not been consolidated into one record lot as required by Sub-section 8103.3 of the Zoning Regulations, the dimensions

were not indicated on the Surveyor's Plat as required by Paragraph 8103.22 of the Zoning Regulations, landscaping plans were not submitted in accordance with Paragraph 7206.91, proposed driveways violated the provisions of Sub-paragraph 7206.733 in that they were in excess of twenty-five feet in width, and the width of parking access aisles were less than that required by Sub-section 7206.5.

14. The Zoning Administrator reviewed revised plans filed on October 24, 1985, showing 230 fixed seats and requiring twenty-three on-site parking spaces. These revised plans were disapproved because the lots had not yet been combined into one lot of record, landscaping plans did not show sufficient detail, and proposed driveways were still in violation of Sub-paragraph 7206.733.

15. The Zoning Administrator subsequently reviewed revised plans filed on November 8, 1985, showing 225 fixed seats and requiring twenty-three parking spaces. These revised plans were approved for zoning purposes on December 5, 1985. The Zoning Administrator determined that the revised plans were in total compliance with the Zoning Regulations, as follows:

- a. The proposed use is permitted as a matter of right in the R-2 District.
- b. The lot, as combined, was in compliance with the lot area and width requirements for the R-2 District.
- c. The proposed building did not exceed the permitted percentage of lot occupancy for the R-2 District.
- d. The rear and side yards met the requirements of the Zoning Regulations.
- e. The building did not exceed the permitted height or story limitations for the R-2 District.
- f. Twenty-three on-site parking spaces were required; twenty-six on-site parking spaces were provided.
- g. Landscaping shown on plans was in excess of that required by the Zoning Regulations.

Accordingly, a partial building permit for excavation, footings, and foundations up to and including the first floor was issued for the proposed project.

16. The parking computations calculated by the Zoning Administrator in the instant case were based on the plans submitted by the owner of the property showing fixed seating.

However, in response to concerns expressed by neighbors, the Zoning Administrator checked the dimensions of the proposed aisle widths to insure that they were not excessively larger than that required by the Building Code. The Zoning Administrator determined that the four foot side aisle widths provided were six inches in excess of the minimum 3.5 foot aisle width required by the Building Code and that the ten foot rear aisle width provided exceeded the eight foot width requirement of the Building Code by two feet. The Zoning Administrator was of the opinion that the aisle widths provided were not excessive in size and did not provide sufficient surplus square footage to permit an increase in the number of fixed seats.

17. If the calculations of the aisle widths had resulted in an excessive amount of square footage in the sanctuary after the allowance for fixed seating as proposed, the parking computations would have been based on the number of fixed seats plus one parking space per each seventy square feet of surplus floor area reduced by aisle widths.

18. Inspections of the construction site are made periodically throughout the construction process to ensure compliance with applicable codes and regulations. If a building permit is issued based on plans showing fixed seating and the approved plans are subsequently revised to show an alternate seating type, the building plans must be reviewed and the number of parking spaces required would be recomputed based on the revised plans.

19. If the seven square foot provisions were applied in the instant case, the parking computations offered by the appellant using the seven square foot provisions were computed incorrectly. The appellant's computations used the gross floor area of the church minus the pool, storage, mechanical and foyer areas. The Zoning Administrator based calculations using the seven square foot provision on "usable" floor area. The Zoning Administrator based "usable" floor area on the gross floor area minus space unusable for seating. In the instant case, the Zoning Administrator would deduct the square footage required for minimum aisle widths required by the Building Code in addition to the unusable space cited in the appellant's computations.

20. The language of Section 7202 of the Zoning Regulations setting forth the parking requirements for a church was adopted on March 1, 1985. The Zoning Administrator based his interpretation of the language of that section on the language setting forth parking requirements for other places of public assemblage such as an arena, armory, assembly hall, auditorium, community center, concert hall, convention hall, dance hall, funeral parlor, ice or roller skating rink, public hall, stadium or theatre, which is

similar to and which predates the adoption of the parking requirements for churches now in effect. That language reads as follows:

One for each ten seats of occupancy capacity for the first 10,000 seats, plus one for each 20 seats above the first 10,000, provided that where such seats are not fixed, each seven square feet usable for seating shall be considered one seat (emphasis added).

21. As to the configuration of the proposed parking layout the Board finds as follows:

- a. The proposed parking is located in the rear and side yards of the subject property. The address of the subject property is on Nicholson Street, therefore, the front yard would be north of the proposed and existing buildings. No parking is proposed to be located in that area.
- b. A building line is defined as "a line beyond which property owners have no legal or vested right to extend a building or any part thereof without special permission and approval of the property authorities, ordinarily a line of demarcation between public and private property but also applied to building restrictions when recorded in the records of the Surveyor of the District of Columbia." The D.C. Surveyor's plat of the subject property does not show a building restriction line. The proposed parking, therefore, is not in violation of Sub-section 7205.3 which prohibits parking between a building line and a lot line abutting a street.
- c. The plans approved by the Zoning Administrator show the use of private landscaping, curbing and brick walls for the protection of public rights-of-way, private walkways, and driveways as required by Sub-section 7206.6.
- d. No proposed driveway is located less

than twenty-five feet from a street intersection as measured from the intersection of the curb lines extended and no proposed driveway is in excess of twenty-five feet in width. The proposed driveways are therefore in compliance with the requirements of Sub-section 7206.7.

22. At its special public meeting of March 19, 1986, the Board denied the appeal and upheld the decision of the Zoning Administrator.

23. By motion filed on March 27, 1986, the counsel for the appellant and the Citizens requested the Board to Stay the effectiveness of the Zoning Administrator's decision pending final action on the subject appeal. At its public meeting of April 2, 1986, the Board denied the motion as not within the jurisdiction of the Board.

24. By letter dated June 2, 1986, the appellant requested the Board to reopen the record and hold a further hearing on the case based on the following new information:

- a. The twenty-five foot right-of-way of Manchester Lane includes approximately 2.5 feet of public space. Vehicles parking on the subject site would have to cross that public space creating a safety hazard for pedestrians.
- b. The architect for the owner misrepresented the type and availability of fixed seating proposed to be used.

The Board denied the appellant's request at its public meeting of June 4, 1986.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the decision of the Zoning Administrator must be upheld. The Board concludes that the Zoning Administrator based his decision on the plans presented by the architect for the owner of the property as set forth in Finding of Fact Nos. 15 and 16. The criteria against which the Zoning Administrator judged the plans before him were based on recently enacted provisions of the Zoning Regulations. The interpretation of the language contained in the Zoning Regulations is consistent with the Zoning Administrator's prior interpretation of similar language setting forth parking requirements as applicable to other uses as set forth in Finding of Fact No. 20. There is no probative evidence that the approved plans do not comply

with the technical aspects regarding configuration and access as set forth in Finding of Fact No. 21.

The appellant has not presented evidence to the Board which indicates any error on the part of the Zoning Administrator in making his determination to issue the building permit for the proposed project. Accordingly, it is hereby ORDERED that the appeal is DENIED and the decision of the Zoning Administrator is UPHELD.

VOTE: Public Meeting of March 19, 1986 - 5-0 (William F. McIntosh, John G. Parsons, Paula L. Jewell, Charles R. Norris and Carrie L. Thornhill to deny).

Public Meeting of April 2, 1986 - 4-0 (William F. McIntosh, Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to deny motion to stay; John G. Parsons not present, not voting).

Public Meeting of June 4, 1986 - 3-0 (Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to deny request to reopen record and for further hearing; Paula L. Jewell and John G. Parsons not present, not voting).

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

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: AUG 29 1986

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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