

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15324 of Roy Littlejohn Associates, Inc., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 357 to establish an adult rehabilitation home, and a variance to allow more than twenty persons (Sub-section 357.1) for an adult rehabilitation home of sixty women and a rotating staff in the basement through the third floor in an R-5-A District at premises 2425 Naylor Road, S.E., (Square 5624, Lot 156).

HEARING DATES: June 27 and July 19, 1990, March 13, 1996
DECISION DATE: September 5, 1990 and April 3, 1996

ORDER ON REMAND

PROCEDURAL BACKGROUND:

The subject application was heard on June 27 and July 19, 1990. At its public meeting of September 5, 1990 the Board granted the special exception to allow the applicant to establish the adult rehabilitation home but denied the variance that would have allowed more than twenty persons. The final order was issued on May 14, 1991. On June 10, 1991, the Board denied the request for a stay of the Board's decision filed by the opponents. On July 10, 1991, the Board granted the opponent's request for reconsideration but reaffirmed its decision by order dated August 2, 1991.

On August 30, 1991, opponents to the application, Neighbors United for a Safer Community (NUSC), filed a petition with the District of Columbia Court of Appeals (DCCA) seeking review of the Board's decision to grant the application. The court reversed the decision of the Board and remanded the case for further proceedings consistent with the court's opinion.

On February 1, 1995, the Board reopened the record and authorized a further hearing limited to the matters raised by the court. In the remand, the court ordered the Board to (a) consider Advisory Neighborhood Commission (ANC) 7B an "affected" ANC and give great weight to the written recommendations of the ANC 7B; and (b) give great weight to the written recommendations of ANC 6C by responding with precision to their concerns and articulating why ANC 6C did not offer persuasive advice under the circumstances.

At the further public hearing held on March 13, 1995, neither ANC 6C or 7B submitted statements or presented further testimony. Both ANCs relied on the previously submitted reports and testimony.

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At the public meeting of April 3, 1996, the Board considered a decision in the case on remand. The issues raised by the court are addressed in this order in the summary of evidence, findings of fact and conclusions of law.

SUMMARY OF EVIDENCE:

1. The applicant filed a motion for a waiver of the Board's 14 day filing requirement to permit filing of its pre-hearing statement and exhibits out of time because Counsel had not been retained until the deadline for filing said documents. The Board found that reasonable grounds existed for granting this motion and that no prejudice would result to other parties who were given the opportunity to file a response to the applicant's pre-hearing statement.

2. The applicant also filed a motion to amend its application to conform to the notice of public hearing and the Zoning Administrator's memorandum both of which identified an adult rehabilitation home for 60 persons. The applicant gave a reasonable explanation for the error in the application which called for 45-50 persons. Since the hearing was advertised for a home for 60 persons, this motion was granted.

3. The subject property is located on the southwest corner of Naylor Road and 25th Street, S.E. and is known as 2425 Naylor Road, S.E. It is in an R-5-A District.

4. The subject lot is irregularly shaped and has approximately 15,583.4 square feet of land area. It is improved with a vacant three-story plus basement apartment building. The building's front is on Naylor Road and is approximately 98.7 feet long and 42.9 feet wide. It contains 14 residential units, 13 of which are two-bedroom units.

5. The area surrounding the subject property is characterized by single-family rowhouses with a few small walk-up apartment buildings interspersed among the rowhouses. There are also some larger apartment buildings nearby. There is a small church located across Naylor Road from the subject property.

6. The applicant requests a special exception to establish an adult rehabilitation home, and a variance from the twenty person limit to allow sixty women and a rotating staff in the basement through third floor of the premises. The premises would be leased to Washington Halfway House for Women, Inc., (WHHW), which will operate the building as an adult rehabilitation home for adult women released by the D.C. Department of Corrections.

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7. WHHW is a private, non-profit agency governed by an independent Board of Directors. Its support comes primarily from a contract with the D.C. Department of Corrections. WHHW is accredited by the American Correctional Association for Adult Residential Service.

8. For more than a decade WHHW has helped female offenders in Washington return to community life. It operates a residential work release program that provides a supportive re-entry into the community for women who have been involved in the criminal justice system. Its existing location at 1816 - 19th Street, N.W. houses 22 women. Professional and para-professional staff provide full time 24 hour coverage to help residents make a smooth re-entry into the Washington community.

9. Currently there are only two work-release facilities for female offenders serving less than seventy women. Based on the Department of Corrections' Five Year Operational Master Plan projections of a 26 percent population increase over fiscal year 1987 figures, the Department is looking for small community based facilities with 30 to 50 bedspaces to meet the Master Plan's program initiative of expanding community correctional bedspace and program meaningful transition back into the community with links to community-based resources.

10. The subject apartment building was constructed approximately 20-25 years ago with its current configuration and interior layout. The applicant claims that as a 14 unit apartment building in that neighborhood, it has never been marketable as rental units or condominiums due to its unusual room-layout and lack of amenities. One-third of a twin building at 2600 Naylor Road, S.E has been converted to a medical clinic.

11. In about 1981, the 2425 Naylor Road Tenants Association acquired the building and converted it to condominium use. At the time of the acquisition the building was half vacant. Even though the tenant's association extensively renovated the building, it was unable to market the units.

12. When the tenants' association was unable to meet its mortgage payment, the lender foreclosed on the property.

13. The applicant purchased the vacant building from the lender in November 1988 and has attempted, unsuccessfully, to market it for residential use ever since. Applicant has undertaken renovation since acquiring the building, including repairs to an exterior wall damaged by a collision with a truck.

14. When WHHW was looking for more halfway house capacity, it inquired of the applicant's broker, who is experienced in locating and marketing halfway house facilities, whether he could locate facilities. WHHW was shown many larger, facilities in commercially zoned areas which were too large and too expensive for the needs of WHHW. The subject building was the only one with a room configuration and layout which both met the needs of WHHW and was affordable.

15. WHHW proposed to continue the services currently offered at its facility at 1816 - 19th Street, N.W. Both houses would be governed by the current board of directors and the executive director. In addition to proposed housing for 50 residents, there would be office space for the program director and counseling staff. The proposed counselor to resident ratio would be maintained 24 hours a day, with the largest number of staff members working on the 4:00 P.M. - 12 midnight shift when the majority of the clients are in the center participating in various in-house programs. Two counselors would be on duty on the 12 midnight - 8:00 A.M. shift. Counselors and administrative staff would occupy the 8:00 A.M. - 4:00 P.M. shift.

16. The applicant stated that there is no other property containing a community-based residential facility for five or more persons in the same square.

17. The applicant stated that there is 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.

18. The applicant maintained that the proposed facility will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area for the following reasons:

a. None of the residents will be allowed to own or drive cars. They will travel to and from their place of employment by means of public transportation. There is a bus stop within two blocks of the subject property. Four bus routes service this bus stop.

b. The building is set back an adequate distance from nearby residences and apartment buildings. The principal entrance will be relocated to the rear of the building.

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20. The applicant argued that variance relief from the limitation to 20 residents was necessary due to the unsuitability of the building for any other use if a portion is to be occupied by residents released by D.C. Department of Corrections. The applicant contended that the remaining units would remain vacant and not generate any income.

21. The applicant further argued that the subject building is exceptional in comparison to other apartments in the area in that with only 14 dwelling units, unusual room layouts, and lacking amenities, it is too small and the operating expenses too high to compete economically with similar apartment developments in the area. Efforts by the tenants association and, later, the applicant to market the units over the past several years have not been successful. The Board is not persuaded that the subject building is exceptional or unique.

22. The Office of Planning (OP), by report dated June 26, 1990, recommended approval of the application, but with a limitation to 40 residents. OP reasoned, based on planning considerations, that the expected average occupancy if the two bedroom units were rented, or used as condominiums, would be 2.5 to 3 persons per apartment. In the opinion of OP a total of 40 adults does not represent an increase in the number of potential residents at the subject site. As a result, the site would generate a similar amount of vehicular and pedestrian traffic as well as other activities, including cooking, deliveries and trash pick-up.

23. The Department of Recreation and Parks, by memorandum dated May 23, 1990, stated that the proposed use will have no impact on its recreation facilities and programs, or on the preservation of its open space.

24. The D.C. Fire Department by letter dated June 12, 1990, had no objection to the application.

25. The Metropolitan Police Department by letter dated June 21, 1990, had no objection to the application. The Police Department indicated that over the past year the immediate area of the site had been crime free and that it was their opinion that the facility would not require an increase in the level of police service.

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26. The Office of the Coordinator for Community-Based Residential Facilities by report dated June 4, 1990, noted that the proposed operator has held numerous community meetings and has over 20 years experience managing its existing location. The report also indicated that two community residence facilities, each with seven residents, were located at 2303 and 2308 Minnesota Avenue, S.E.

27. The Department of Corrections by letter dated June 6, 1990, stated that the applicant has a credible history in operating their existing program in Dupont Circle. The number of females incarcerated has increased in the city. The criminal justice system has been accepting of community supervision. However, many females are still in prison because of a lack of community based programs such as the one proposed for the subject site.

28. The property is located in Advisory Neighborhood Commission (ANC) 6C. By letter dated June 18, 1990, ANC 6C voted to reject the application for the following reasons:

a. The community is overrun with various kinds of residential facilities;

b. The size of the project, i.e., sixty women, was too large; and

c. The community has had unpleasant experiences with similar projects in the past.

30. Advisory Neighborhood Commission 7B participated as a party in the application. The subject property is not located within the boundaries of ANC 7B, however, the property is located across the street from the border-line for ANC 7B. Therefore, ANC 7B is an affected ANC whose written recommendations are entitled to great weight.

31. ANC 7B, by letter dated June 20, 1990, voted to oppose the application. ANC 7B stated that WHHW deliberately misrepresented to the community that the number of female offenders and rotating staff that would be housed at the proposed facility would be 45, rather than 60. The ANC stated that it must consider that such a deliberate misrepresentation could be indicative of how the WHHW would operate the facility.

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ANC 7B stated that it is concerned about the proliferation of group homes in this Southeast section of the city. It further stated that granting the variances or special exceptions to permit the establishment of youth and adult rehabilitation homes in residential communities constitutes a matter of significant importance to the neighborhood plan, development and stability.

Finally the ANC stated that in voting overwhelming to oppose the opening of this facility, the community gave great consideration to the fact that there is an elementary school on property adjoining the site of the proposed halfway house. Further ANC 7B stated that the community is already experiencing problems with drugs in the area and they feel that this facility would exacerbate the problem.

32. A document containing the statutory breakdown of all community-based residential facilities in the District of Columbia was entered into the record at exhibit No. 41. This document indicated that Ward 5 contains only 15% of the total number of such facilities with only one adult rehabilitation home located in the Ward. The document does not indicate whether there are any similar facilities located within the boundaries of ANCs 7B or 6C.

33. There were several letters in support of the application which spoke to the need for this facility and described favorably the impact on the community of the existing WHHW facility.

34. There were numerous letters and petitions in opposition to the application including letters from the City Council representative of Wards Six and Seven.

FINDINGS OF FACT

Based on the evidence of record, the Board finds as follows:

1. There are no other properties containing a CBRF for seven or more persons in Square 5624.

2. There are no other CBRFs for seven or more persons located within a radius of 500 feet from the subject site.

3. The applicant will provide adequate parking to meet the needs of the employees and visitors to the facility. The residents will not be permitted to own cars. Therefore, they will not need parking.

4. The applicant will meet all applicable code and licensing requirements.

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5. The facility will not have an adverse impact on traffic in the area.

6. The operator's rules will keep the facility from having an adverse impact on the neighborhood because of noise or operations.

7. There are no similar facilities in the ANC 6C or 7B area.

8. No first hand, specific incidents of unpleasant experiences were described by ANC 6C. Therefore ANC 6C's statement that the community has had unpleasant experiences with similar projects in the past is unsupported in the ANC written report.

9. The Board is without sufficient information about the circumstances surrounding the communication between ANC 7B and WHHW to determine whether the statement made was a deliberate misrepresentation. Therefore, the Board cannot discredit the character of WHHW based on the statement made about the proposed number of residents and staff.

10. ANC 7B has not submitted specific evidence to rebut the applicant's claim that there are no similar facilities in the area.

11. ANC 7B has not presented specific evidence linking the drug problem in the community to potential problems with the proposed facility. Therefore, the Board finds that establishing the proposed facility will not adversely affect the use of neighboring property.

12. The Board finds that the many incidents of crime against residents described by witnesses for the Neighbors United were not directly connected with, or caused by, the presence of existing community-based residential facilities. Moreover, the Board finds that the existing program operated by WHHW, which is exemplary and crime-free, will be duplicated at this facility. There was no evidence to which the Board can give any weight concerning the impact of the proposed facility on property values and traffic.

13. The Board does not concur with the recommendation of OP to grant the variance with the limitation on the number of residents to be 40.

14. The Board finds that the applicant's proposal of 60 women residents would be too many for the site, as argued by ANC 6C.

CONCLUSIONS OF LAW AND OPINION:

Based on the application before the Board, the Board concludes that the applicant is seeking a special exception to establish an adult rehabilitation home in an R-5-A district. The granting of such relief requires a showing through substantial evidence that the application will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of neighboring property in accordance with the Regulations and Map.

The applicant is also seeking a variance to allow more than twenty women to reside at the facility. Granting such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

As to the variance, the Board is faced with an apparent case of first impression on the issue of whether the requested variance is an area or a use variance. The applicant has contended that the application is an area variance but has submitted evidence which it believed would support the granting of either an area or a use variance. Neighbors United has contended that the request is for a use variance.

The Board concludes that this is an area variance, the granting of which requires a showing of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property which is inherent in the property itself. The Board reasons that this is an area variance because it will not alter the character of the zoned district Palmer v. Board of Zoning Adjustment, 287 A. 2d. 535, 541 (D.C. App. 1972).

The applicant is not seeking to establish a use which is non-conforming in the R-5 District. An adult rehabilitation home is permitted as a special exception in the R-5 District and, thus, is compatible under certain conditions with the matter-of-right uses in that district. The District of Columbia Court of Appeals has held that whenever the Zoning Regulations use the word "permitted" unqualifiedly, as they do for matter-of-right and special exceptions, it means permitted as of right or by special exception. Sheridan-Kalorama Neighborhood Council v. District of Columbia Board of Zoning Adjustment, 411 A. 2d 959, 962 (D.C. App. 1979).

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The applicant has not established that the strict application of the Zoning Regulations will incur peculiar and exceptional practical difficulties. The applicant's contention that the unique size and configuration of the apartments and that a lack of a sufficient number of units and other amenities are unique circumstances peculiar to the property, is not supported by the size, configuration, and number of units or other amenities which comparable apartment buildings in the area have which render them any more or less marketable than the subject structure.

With regard to the special exception, the Board concludes that the applicant has met the burden of proof under Sections 3108.1, 357 and 358 of the Zoning Regulations.

An issue was raised about whether the applicant has met the provision of Subsection 358.6 which states that "the facility shall not have an adverse impact on the neighborhood because of (emphasis added)...the number of similar facilities in the area."

Based on the remand from the court, the Board determines that "similar" facilities means CBRFs in the same impact classification as set forth in Zoning Commission Order No. 347. In that Order the Zoning Commission determined that there would be three classifications: Class A - facilities deemed to have the least impact and most compatibility with the residential community; Class B - facilities deemed to be moderate in impact and less compatible with the residential community; and Class C - facilities that would potentially have the greatest impact and would be least compatible with the residential community. Youth and adult rehabilitation homes and substance abusers homes are in Class C.

The term "area" has been construed to mean within a particular ANC. Therefore, the issue before the Board would be whether locating the proposed facility at the site would have an adverse impact because of the number of youth or adult rehabilitation homes or substance abusers homes within the boundaries of ANC 6C or 7B. Neither of the ANCs presented evidence on this issue. The list of CBRFs entered into the record by another party indicated that Ward 5 contains a certain number of facilities but there was no evidence to demonstrate that the specific types of facilities at issue are located in the affected ANCs. Lacking specific evidence that there is a proliferation of CBRFs as claimed by the ANC, the Board must conclude that the applicant's position has not been rebutted successfully.

The Board concludes that it has afforded ANCs 6C and 7B the great weight to which they are entitled. The Board concludes that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to

affect adversely the use of neighboring property. However, the Board concludes that the variance will be of substantial detriment to the public good and will substantially impair the intent and purpose of the zone plan.

It is therefore **ORDERED** that the special exception to establish an adult rehabilitation home for twenty residents is **GRANTED** and the variance request is **DENIED**.

VOTE: 3-1 (Angel F. Clarens, John G. Parsons, and Susan Morgan Hinton to **GRANT** the special exception and **DENY** the variance; Laura M. Richards opposed to the motion; Sheila Cross Reid not voting, not having heard the case).

THIS ORDER WAS ISSUED AS A PROPOSED ORDER PURSUANT TO THE PROVISIONS OF D.C. CODE SECTION 1-1509(D). THE PROPOSED ORDER WAS SENT TO ALL PARTIES ON JULY 21, 1997. THE FILING DEADLINE FOR EXCEPTIONS AND ARGUMENTS WAS AUGUST 11, 1997. THE DEADLINE FOR RESPONSES WAS SEPTEMBER 5, 1997. NO PARTY TO THIS APPLICATION FILED EXCEPTIONS OR ARGUMENTS RELATING TO THE PROPOSED ORDER. THEREFORE, THE BOARD OF ZONING ADJUSTMENT ADOPTS AND ISSUES THIS ORDER AS ITS FINAL ORDER IN THIS CASE.

**BY ORDER OF THE BOARD OF ZONING ADJUSTMENT – SHEILA CROSS REID,
BETTY KING AND JOHN G. PARSONS**

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

ATTESTED BY: 
SHERI M. PRUITT-WILLIAMS
Interim Director

FINAL DATE OF ORDER: AUG - 5 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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UNDER 11 DCMR 3103.1, "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 TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATION OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord15324/rcl/twr/ljp

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15324

As Interim Director of the Board of Zoning Adjustment, I hereby certify and attest that on ~~_____~~ ^{AUG 5 1998} a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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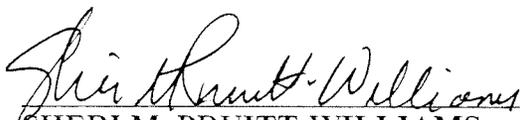
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DATE: AUG - 5 1998