

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  
DECISION DATE: September 5, 1990

**FINDINGS OF FACT:**

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.

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 programming to provide a 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 tenants' association extensively renovated the building, it was unable to market the units.

12. When the tenants' association was unable to meet its mortgage payments, 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 renovations 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 60 residents, there would be office space for the program director and counseling staff. The proposed counselor to resident ratio would be approximately 8-10 to 1. Supervision and security 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. There is no other property containing a community-based residential facility for five or more persons in the same square.

17. 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. There are 14 parking spaces in the rear of the building which will be available for employees and staff. The residents will not be permitted to own or drive cars.

19. 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:

- 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.

- c. The residents will leave in the morning to report to their jobs and will not return until between 5:00 P.M. - 7:00 P.M. In the evening the majority of the residents will participate in mandatory in-house programs.
- d. Family visitation time would be on Sundays between 10:00 A.M. and 2:00 P.M. Only children 12 years of age or younger would be allowed to visit. A maximum of approximately 20 children would be expected to visit at any one time. There would also be a church family day on the last Thursday of each month. Five or six church members, including the deacon, would provide a hot meal and a church service for the residents.
- e. The house will have a maximum of six yearly holiday celebrations. These celebrations would take place between 7:00 P.M. and 9:00 P.M. on such designated holidays as Christmas, Thanksgiving, Valentine's Day and Mother's Day.
- f. There will be one delivery per month of food, office and other supplies. There will be weekly delivery and pickup of linens and weekly delivery of milk, eggs and bread. The chef will go out twice a week for supplies of fresh produce and fruits.
- g. Trash will be deposited in two dumpsters located at the rear of the property. The trash will be picked up by a private company three times a week.
- h. There are no similar facilities in the area.

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 Board does not concur with the recommendation of OP to grant the variance with the limitation on the number of residents proposed by OP.

24. 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.

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

26. 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.

27. 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.

28. 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.

29. Advisory Neighborhood Commission (ANC) 6C, by letter dated June 18, 1990, 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 (ANC) 7B, was notified of the application and participated in the hearing as a party, even though the subject property is not within the boundaries of that ANC. ANC-7B by letter dated June 20, 1990 voted to oppose the application, citing similar reasons as ANC-6C including that the community is experiencing problems with drugs and this proposed use would exacerbate that problem.

31. The Board is required to give great weight to the written recommendation of the ANC and agrees with the ANC's view concerning the size of the facility. However, the Board finds from a statistical breakdown of all community based residential facilities in the District of Columbia that Ward 6 falls in the middle of the range, having only 15% of the total number of such facilities (by contrast, Ward 4 has 24%). Moreover, there is only one adult rehabilitation home located in Ward 6. No first had, specific incidents of unpleasant experiences were described by ANC-6C from which the Board could find that the applicant does not meet the requirements of the sections of the Zoning Regulations under which it seeks relief.

32. A community group known as Neighbors United for a Safer Community submitted a written statement and the oral testimony of several witnesses in opposition to the application. The opposition of Neighbors United focused largely on issues of public safety, but also was concerned with the impact of the proposed facility on property values and traffic. The Board finds that the many incidents of crime against residents described by witnesses for 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.

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 representatives of Ward Six and Seven.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of 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 complied with the requirements of Section 357 of the Zoning Regulations. The Board further concludes that the special exception can be granted as in harmony with the intent and purpose of the Zoning Regulations and that it will not affect adversely the use of neighboring property.

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).

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.

The Board concludes that it has afforded the ANC the great weight to which it is entitled. The Board concludes that the special exception can be granted as in harmony with the general

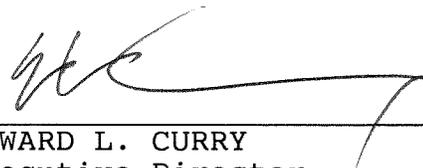
purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. However, the Board further concludes that the variance will be of substantial detriment to the public good and will substantially impair the intent and purpose of the zone plan.

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: 4-1 (John G. Parsons, William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to **GRANT** the special exception and **DENY** the variance; Paula L. Jewell opposed to the motion by proxy).

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

ATTESTED BY:

  
\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

MAY 14 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT 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.

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 SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN

**BZA APPLICATION NO. 15324**  
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**APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS  
FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.**

**15324Order/RCL/bhs**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 15324**

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY 14 1991 a copy of the order entered on that date in this matter was mailed 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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**BZA APPLICATION NO. 15324**  
**ATTESTATION SHEET PAGE 2**

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EDWARD L. CURRY  
Executive Director

DATE:                     MAY 14 1991