

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15371 of James A. and Wanda F. Nickens, pursuant to 11 DCMR 3108.1, for a special exception under Section 357 for a substance abusers home of five residents and a rotating staff in an R-5-B District at premises 3551 16th Street, N.W., (Square 2687, Lot 798).

HEARING DATE: October 17, 1990
DECISION DATE: November 7, 1990

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject premises is located on the east side of 16th Street between Ogden and Oak Streets and is known as premises 3551 16th Street, N.W. It is zoned R-5-B.

2. The property is rectangular in shape with a frontage of 22 feet along 16th Street and a depth of 60 feet. The site abuts a 16-foot wide public alley to the rear.

3. The property is currently improved with a three-story plus basement brick row dwelling. Two on-site parking spaces are provided at the rear of the site and are accessible from the 16-foot wide public alley.

4. The area surrounding the subject site is predominantly characterized by single-family row dwellings, flats and small to large apartment buildings. To the west across 16th Street are the Woodner and Oaklawn Terrace apartment buildings.

5. The applicant proposes to establish a substance abusers home for up to five pregnant women recovering from alcoholic or drug addiction and who are in the third trimester of pregnancy.

6. A substance abusers home for up to 20 residents, not including resident supervisors and their families, is permitted as a special exception in an R-5-B District subject to the following criteria:

- a. There shall be no other property containing a community-based residential facility for five (5) or more persons in the same square.

- b. There shall be no other property containing a community-based residential facility for five (5) or more persons within a radius of five hundred feet (500') from any portion of the subject property.
- c. There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility.
- d. The proposed facility shall meet all applicable code and licensing requirements.
- e. The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.
- f. The Board may approve more than one (1) community-based residential facility in a square or within five hundred feet (500') 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.
- g. The Board shall submit the application to the Director of 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 D.C. Departments of Public Works, Human Services, and Corrections, and if a historic district or historic landmark is involved, of the State Historic Preservation Officer.

7. The referral memorandum from the Zoning Administrator's office dated May 29, 1990, stated that occupancy records indicate that there are no other community-based residential facilities with five or more residents within the same square or within 500 feet of the proposed facility.

8. The Office of Planning (OP) by memorandum dated October 24, 1990, identified an existing community-based residential facility for up to six elderly residents within the same square as the subject site, located at 3539 16th Street, which has been in operation for approximately ten years.

9. Two parking spaces will be provided at the rear of the subject premises to accommodate occupants, employees, and visitors at the proposed facility. The applicant testified that additional parking is available on an hourly basis in the garage of the Woodner apartment building directly across 16th Street to the west.

10. The subject premises currently has a certificate of occupancy for a four-unit apartment house. At present, the applicant occupies the units on the second and third floors; the first floor is currently occupied as the applicant's medical offices; and the basement apartment unit is currently vacant.

11. The applicant proposes to use the upper floors to house up to five pregnant women in the last trimester of pregnancy who have a history of drug abuse. The first floor would continue to be occupied as the applicant's medical offices and the applicant would reside in the basement apartment unit.

12. The proposed facility is a model program intended to provide a drug and alcohol-free environment for pregnant women with a history of substance abuse and would offer coordinated obstetric care, drug treatment and other counseling services with the goal of reducing the incidence of births of drug-addicted babies and lowering the infant mortality rate attributed to drug abuse by women during pregnancy. The women will be referred to other facilities and will not return to the subject facility after the birth of their children. The number of similar facilities in the area are presently inadequate to service the increasing demand for such services in the District.

13. The subject facility will be staffed by one "house mother" who will reside at the facility in a family-style living arrangement, a certified addiction specialist and family therapy specialist. In addition, the applicant, who resides and operates his medical premises at the subject site, is one of very few medical doctors who specialize in both obstetrics and addictive medicine. In addition, Dependencies Anonymous meetings, which are open to the public, are available to the residents at the subject site.

14. Prior to referral to the Board for special exception relief, the applicant filed for a waiver of the requirements of the Zoning Regulations contending that the application of the zoning criteria to the subject proposal would violate the Fair Housing Amendments Act of 1989 (FHAA). By memorandum to the Zoning Administrator's office, dated July 30, 1990, the Office of the Corporation Counsel concluded that special exception approval would be required for the proposal and that the application of the appropriate criteria set forth in the Zoning Regulations would not be inconsistent with the FHAA. By memorandum dated August 10, 1990, the Office of the Coordinator for Community-Based Residential Facilities concurred with the OCC's conclusions. The Board concurs with the conclusion of the Office of the Corporation Council.

15. By memorandum dated October 10, 1990, the Office of Planning (OP) recommended approval of the application. The OP was of the opinion that the proposed facility was in compliance with the applicable provisions of the Zoning Regulations. The OP was further of the opinion that the proposal would provide a needed service to the city as a whole without causing an increase in the intensity of use of the property and without causing substantial adverse impacts on the neighborhood.

16. Advisory Neighborhood Commission (ANC) 1A, by resolution dated October 12, 1990, opposed the granting of the application. The ANC's opposition is generally summarized as follows:

- a. There is an existing facility within the same square at 3539 16th Street, N.W.
- b. There are at least four community-based residential facilities for five or more residents within 500' feet of the subject site located at 3539 16th Street, 1447 Oak Street and 1433 and 1435 Spring Road, N.W.
- c. The two on-site parking spaces proposed to be provided are inadequate to accommodate the potential parking demand for employees, residents, and visitors to the subject site.
- d. The proposed facility should be required to comply with all code and licensing requirements. No waiver of any code should be granted because it would eliminate a legal mechanism to monitor the program.
- e. The generation of increased traffic to the subject site has the potential of disrupting the residential character of the area and would adversely impact on the demand for existing on-street parking by area residents.
- f. There is no way to determine whether the proposal will or will not have an adverse impact on the community in terms of noise.

17. By memorandum dated September 16, 1990, the D.C. Fire Chief offered no objection to the application.

18. By letter dated August 17, 1990, the Metropolitan Police Department (MPD) offered no opposition to the application. The MPD was of the opinion that the proposed use would not require an increase in the level of police services currently being provided.

19. By letter dated October 17, 1990, Councilmember Frank Smith, Jr. supported ANC-1A's opposition to the granting of the application. Councilmember Smith was of the opinion that the area has a disproportionate number of community-based residential facilities and, further, that such facilities should be equally distributed throughout the city to ensure that all neighborhoods participate in this community service process.

20. By letter dated October 17, 1990 and by testimony at the public hearing, a representative of the Columbia Heights Neighborhood Coalition and the Ward One Council noted that neither organization took a vote on the instant application, but noted the general policy of both organizations to express concern about the continued intense concentration of community-based residential facilities in Ward One and Columbia Heights in particular.

21. Several area residents and property owners testified at the public hearing in opposition to the application. In addition to the issues and concerns expressed by the ANC, the opposition included the following:

- a. There are two community-based residential facilities within 500' feet at 1437 and 1441 Spring Road. In addition, the Coalition for the Homeless has entered into an agreement to provide emergency shelters at 1433 and 1435 Spring Road which are also within 500' feet of the subject premises.
- b. The location of some community-based residential facilities are not adequately monitored by the D.C. Government because they are misclassified as boarding and rooming houses or apartment buildings.
- c. The long-standing problems of crime and drugs in the Columbia Heights area will be exacerbated by further institutionalization of the area and denser concentrations of such facilities will threaten the residential stability of the neighborhood.
- d. There is no adequate trash storage and pick-up plan to address the accumulation and disposal of possible hazardous waste, including hypodermic needles at the site.
- e. The proposed use will generate an increase in the need for emergency transportation and ambulance services to serve the residents of the facility.

- f. The proximity of the facilities to known drug activity areas in the community and the on-site medical offices, which would require storage of drugs needed to treat patients, is inappropriate as a location for housing persons with substance abuse problems.
- g. The proposal is intended to address a city-wide need and will not serve the needs of the immediate community.
- h. The subject premises is too small to accommodate the level of activity proposed.

FINDINGS OF FACT:

1. The applicant failed to offer probative evidence as to whether the facility would be able to comply with all applicable code and licensing requirements.

2. The Board notes that the existence of other community-based residential facilities within the square or within 500 feet of the subject facility does not automatically preclude Board approval of the subject application should the Board find that the cumulative effect of the facilities will not have an adverse impact on the neighborhood in terms of traffic, noise or operations. It is unclear from the evidence presented whether all of the facilities cited by the opposition are actually classified as community-based residential facilities making it difficult for the Board to assess the cumulative effects on the community.

3. No evidence relevant to the program needs served or the operational characteristics of other community-based residential facilities in the area was provided.

4. With respect to the subject premises, the Board finds that the combined use of the premises as a community-based residential facility for five persons, the medical offices of an obstetrician, and a residence would result in an adverse impact on the immediate area in terms of density and traffic.

5. The Board finds that the applicant failed to prove that traffic generated by such concentrated use of the site would not have adverse effects on traffic patterns in the area and, further, that the provision of two on-site parking spaces would be adequate to accommodate employees and visitors to the site without resulting in an overspill of parking demand onto neighboring streets.

6. While it has been noted that the alleged proliferation of community-based residential facilities in the area has not been clearly established, the Board is persuaded that the existing level of land use in the area, whether residential or institutional in nature, results in a highly developed urban neighborhood and that the granting of the proposed usage would not be in keeping with the intent and purpose of the Zoning Regulations and Map.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires substantial evidence of compliance with the criteria set forth in Sections 357 and 358 of the Zoning Regulations. The Board concludes that the applicant has not demonstrated such compliance. There is a community-based residential facility for five or more residents within the subject square. The applicant has not provided any evidence that the facility will meet all applicable code and licensing requirements. The applicant has not adequately demonstrated that the two on-site parking spaces provided would be adequate to accommodate the demand generated by the proposed use. The facility is likely to have an adverse impact on the neighborhood in terms of noise, traffic, operations and the number of facilities in the area.

The Board concludes that it has afforded the ANC the "great weight" to which it is entitled. The Board further concludes that the requested special exception cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations and will tend to adversely effect the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore ORDERED that the application is hereby DENIED.

VOTE: 3-0 (Paula L. Jewell and Carrie L. Thornhill to deny; John G. Parsons to deny by proxy; Sheri M. Pruitt and Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY: 
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: JUN 9 1992

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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."

Ord15371/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 9 1992 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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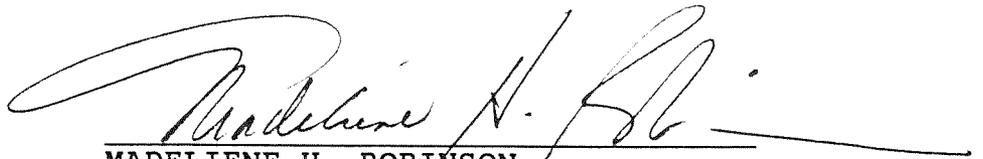
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MADELIENE H. ROBINSON
Acting Director

DATE: JUN 9 1992