

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15412 of the D.C. Department of Administrative Services, pursuant to 11 DCMR 3108.1, for a special exception under Section 305.1 and 305.8 to allow an emergency shelter for 138 women in the basement through the second floor and trailers in an R-4 District at premises 651 10th Street, N.E., (Square 960, Lot 852).

HEARING DATE: December 19, 1990  
DECISION DATES: February 6 and March 6, 1991

FINDINGS OF FACT:

1. The subject site is located at the southeast corner of the intersection of 10th and G Streets and is known as premises 651 10th Street, N.E. It is zoned R-4.

2. The property has a frontage of 111.0 feet along 10th Street and 153.75 feet along G Street for a total lot area of approximately 13,187.7 square feet.

3. The area surrounding the subject site is primarily developed with single-family row dwellings and flats. The site is approximately one block south of a commercial strip along H Street, N.E.

4. The R-4 District allows matter-of-right development of single-family detached, semi-detached and row dwellings, flats and conversions of structures existing on May 12, 1958 to apartment use with a minimum lot area of 900 square feet per unit.

5. The site is developed with a two-story plus basement brick structure which was previously used by the D.C. Board of Education for school purposes.

6. The subject premises have been leased by the D.C. Government to the House of Ruth to use as an emergency shelter for over ten years. The House of Ruth, hereinafter referred to as the applicant, provides shelter for approximately 84 single women in the existing school building. Approximately 40 women who are handicapped and/or elderly are in residence 24 hours a day. The existing building also contains staff offices, a medical clinic, a day room for residents, a showering facility and a large kitchen. Approximately 150 meals are prepared and served at the shelter daily. In addition, approximately 100 sandwiches are prepared and served on a daily basis to homeless men and women who are not currently accommodated by existing facilities.

7. In 1987, four trailers were installed on the site to the rear of the existing structure. The trailers augment the services provided by the facility in the existing structure through providing space for an additional 54 beds to serve homeless women on the site. No building permit or certificate of occupancy was issued to allow the placement of the trailers on the site. The applicant is currently seeking special exception approval to house a total of 138 women in the existing Madison school building and the trailers currently on the site.

8. The R-4 District permits emergency shelters for five to 15 persons with Board approval, subject to the following provisions:

- 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 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 may approve a facility for more than fifteen (15) persons, not including resident supervisors and their families, only if the Board finds that the program goals and objectives of the District cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District of Columbia.
- h. 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.

9. There are no community-based residential facilities for five or more persons located in the same square as the subject site.

10. Approximately 500 feet south of the subject site is the Sasha Bruce residence facility for fifteen youths at 1022 Maryland Avenue, N.E.

11. Within approximately five blocks of the subject site are two shelters which accommodate approximately 150 persons each; three drug and alcohol abuse clinics operated by the D.C. Government; the CEASED Clinic; Womens Services Clinic; TRAIN-II Clinic; and two halfway houses.

12. No off-street parking is provided on the site. The trailers currently occupy the area of the site which was formerly used for playground and parking purposes. The applicant indicated that on-street parking in the neighborhood was adequate to meet the need of shelter occupants, employees and visitors.

13. The facility has been in operation for a number of years and has been subject to inspections by appropriate agencies to ensure compliance with all applicable code and licensing requirements.

14. The applicant's representative testified that the facility has not had an adverse impact on the immediate area with regard to vehicular traffic. Since the applicant began processing of the instant application, several neighbors complained of an increase in pedestrian traffic, trash accumulation, loitering, drug use and sales, open sexual behavior and crime in the immediate neighborhood. The applicant's representative argued that it is not legally responsible for the activities of the residents once they leave the shelter. The applicant's representative further argued that any loitering, trash, drug activities, or crime in the area are not unique to this neighborhood and that there is no correlation between those activities and the operations of the shelter.

15. The applicant's representative argued that the program goals and objectives of the District cannot be met by a facility of a smaller size at the subject location and that there is no other reasonable alternative to meet the program needs of that area

of the District of Columbia, As a result of the decision in Robbins vs. Reagan, 616F Supp. 1259 (DCDC 1985), the federal shelter located at 2nd and D Streets, N.W. was closed and the District of Columbia agreed to place 40 trailers on D.C. Government property for use as emergency shelters for the city's homeless population. Four of those trailers have been installed at the subject site. Pursuant to the court's decision in Atchison vs. Barry, Case No. CA-11976-88, slip op at 5 (DC Sup. Ct. 1989), the District must not reduce the number of beds provided, however, it has the option to relocate the 138 beds housed at the subject site to another suitable location. The applicant has been unsuccessful in its attempts to relocate the existing shelter or to open new shelter locations due to opposition voiced by neighbors of possible relocation sites.

16. The applicant's representative argued that the Board lacks jurisdiction in the instant case and, therefore, the application should be dismissed. In support of its argument that the Board lacks jurisdiction, the applicant's representative offered the following:

- a. Section 7 of the DC Comprehensive Plan Amendments Act of 1989, DC Law 8-129, 37 DC Reg. 55 (1990) made all future District properties subject to zoning regulation as of May 23, 1990. However, Section 7(b) of the Act gave the Mayor until May 23, 1991 to resolve any current land use conflicts with the Zoning Regulations, thereby "grandfathering" existing uses for a period of one year.
- b. The statute is unclear as to what jurisdiction the Board has over pre-existing land use conflicts which may or may not be resolved by the Mayor's office through amendments to the Zoning Map or Regulations.
- c. Prior to May 23, 1990, the use of District-owned land was not subject to zoning regulation, therefore, the memo from the Zoning Review Branch directing the applicant to file for a special exception in March 1990 was incorrectly issued.
- d. In Atchison vs. Barry, the Superior Court ordered that the shelter be kept open for its current use until further order of the Court. It is unclear whether the Board has jurisdiction given that the effect of zoning action could force closure of the shelter in violation of the Court's order forbidding such closure.

17. The Office of Planning (OP), by memorandum dated December 12, 1990, recommended that the application be approved. The OP was of the opinion that the subject shelter has provided a significant service to the community and is needed to achieve the goals and

objectives of the city. The OP was further of the opinion that while the use of trailers at the site may intensify some of the impacts on the surrounding area, such use is temporary and the applicant is seeking alternate locations to satisfy the existing need in the area. The OP therefore recommended approval for a period of three years to allow a reasonable time for the applicant to find alternative accommodations for persons currently housed in the trailers at the subject site.

18. By memorandum dated October 15, 1990, the D.C. Fire Chief indicated that the Fire Department evaluated the case to determine its impact on emergency operations and offered no objection to the granting of the application.

19. By memorandum dated December 11, 1990, the D.C. Department of Public Works (DPW) offered no objection to the granting of the application. The DPW was of the opinion that the continued use of the existing building and trailers as an emergency shelter should not increase traffic in the neighborhood.

20. By memorandum dated December 18, 1990, the Department of Human Services (DHS) recommended approval of the application. The DHS noted the service provided by the House of Ruth in the past and the growing need to provide shelter for homeless persons. The DHS was further of the opinion, based on the Atchison case, that the shelter is required to remain open unless replaced with a comparable number of bed spaces and staff, or until further orders of the Court are issued.

21. Advisory Neighborhood Commission (ANC) 6A, by letter dated November 2, 1990, withdrew its previous correspondence, dated October 5, 1990, which recommended approval of the application with conditions.

22. By letter dated December 1, 1990, Advisory Neighborhood Commission 6A opposed the granting of the subject application. The ANC's opposition was generally based on the following:

- a. The housing of approximately 50 women in the four trailers on the subject site overtaxes the applicant's management capabilities and community resources such as police and recreation department staff.
- b. The adverse impacts of the use on the community during the years of its operation at the subject site include improper public behavior of the residents of the facility; the congregation of male residents from another facility in the area of the subject site; and trash and debris accumulation near the site and in the park across the street from the subject site.

- c. There is a proliferation of social service facilities in the immediate area including methadone maintenance facilities and community residence facilities.
- d. The ANC did not oppose the continued use of the school building to house approximately 80 women.

23. The Capitol Hill Restoration Society, by letter dated December 12, 1990, indicated that it did not oppose the application subject to the following conditions:

- a. that the special be granted for a period of three years;
- b. that the trailers are phased out over the three year approval period; and,
- c. that the applicant establish a neighborhood advisory council to provide a forum for discussion of matters of concern to the applicant and the neighbors.

24. The Stanton Park Neighborhood Association (SPNA), by letter dated December 15, 1990, opposed the use of trailers to house 54 women. The SPNA was of the opinion that the use of trailers to accommodate residents is inappropriate. The SPNA was further of the opinion that the increase in the number of residents at the site through use of the trailers places an undue burden on the area because of the concentration of similar facilities in the area.

25. The Tollgate Association of Capitol Hill, by letter dated December 18, 1990, opposed the granting of the application based on the existing density of similar services in the area and because of the adverse impacts the use of the trailers has had on the immediate area in terms of traffic, noise, crime, and trash.

26. By letter dated December 19, 1990, Councilmember H.R. Crawford supported the granting of the application based on the applicant's long history of service to homeless and battered women and children and the great benefit the project provides to residents of the District.

27. By letter dated October 25, 1990, Councilmember Nadine P. Winter opposed the granting of the application based on the public opposition to the project by neighboring residents.

28. Numerous community groups, property owners and residents opposed the application in writing and by testimony at the public hearing. The opposition's testimony detailed the adverse impacts of the subject facility on the immediate neighborhood as well as the cumulative impacts created by the proliferation of similar facilities in the area. In addition, the opposition argued that

the location of the trailers at the subject site violated the lot occupancy, side yard, parking and use provisions of the Zoning Regulations and, further, did not meet all the relevant health and safety provisions of the building code.

29. At the conclusion of the public hearing, the Board left the record open to receive advice from Corporation Counsel as to the effect of the consent decree in Atchison vs. Barry, CA 11976.88 on the jurisdiction and authority of the Board to decide the application; for the applicant to submit a draft plan for the creation of a neighborhood liaison group; specifications for the mobile shelters; a determination by the Zoning Administrator as to whether the location of trailers on the subject site affects the calculation of the percentage of lot occupancy prescribed in 11 DCMR 403.2; the Court's decisions in First Baptist Church vs. the BZA (432 A.2d 685, DC App. 1981) and Wheeler vs. the BZA (139 A2d. 85, DC App. 1987); and for the Office of Planning to refer the case to the D.C. Fire Department for evaluation related specifically to fire safety and the placement of trailers on the subject site. The application was scheduled to be decided at the Board's public meeting on February 6, 1991.

30. By letter dated January 23, 1991, counsel for the applicant submitted a draft plan for the creation of a neighborhood advisory council; standard manufacturer specifications and floor plans for the mobile shelter units; and copies of the 1987 plan correction and inspection reports filed by the Fire Department and the Department of Consumer and Regulatory Affairs regarding the installation of the mobile shelter units.

31. By memorandum dated January 23, 1991, the Office of Planning (OP) submitted a memorandum from the the Fire Chief, dated January 22, 1991. The memorandum indicated that the Fire Department re-evaluated the request to determine the project's impacts affecting emergency operations. Based on its review and a site visit, the Fire Department indicated that each emergency shelter was free of hazards, was protected by an approved sprinkler system, adequate access was provided, and the previously approved means of egress from each shelter was sufficient. Accordingly, the Fire Department offered no objection to the application. The Office of Planning also attached a letter from the Fire Marshal, dated November 18, 1987, setting forth the conditions to be met prior to approval of the location of emergency mobile shelters at the subject site, as well as a letter from the Fire Marshal dated October 14, 1987 addressing its concerns and recommendations relative to an inspection of a Lifeline Emergency Mobile Shelter located at 3rd and Jefferson Drive, N.W.

32. On January 22, 1991, counsel for the applicant filed a motion for an extension of time to file its factual post-hearing submission. The motion was generally based on the unavailability

of a written transcript of the public hearing of December 19, 1990. The applicant argued that the public hearing transcript was essential to the task of submitting supplemental materials and responding to issues raised by opposing parties during the public hearing process. The Secretary to the Board of Zoning Adjustment informed counsel for the applicant that the motion for extension was granted, in part, for a period of ten days.

33. By letter dated January 23, 1991, counsel for the applicant submitted the following materials:

- a. A draft plan for the creation of a neighborhood advisory council to convene on a quarterly basis, consisting of 11 voting members including four neighbors, three staff, one House of Ruth boardmember and three residents, and several honorary members including an ANC representative, City Councilmember, Police Department representative, etc.
- b. Standard manufacturer specifications and floor plans for the Lifeline Mobile Emergency Shelter units.
- c. Copies of plan correction and inspection reports from the Fire Department and the Department Consumer and Regulatory Affairs regarding installation of the mobile emergency shelters at the subject site.

34. At its public meeting of February 6, 1991, the Board deferred consideration of the application until its public meeting of March 6, 1991 to afford additional time for the submission of materials from the Corporation Counsel and the Zoning Administrator in response to the Board's requests made at the conclusion of the public hearing on the application.

35. By memorandum dated February 7, 1991, the Office of the Corporation Counsel advised the Board that it found no support in Atchison vs. Barry for the applicant's contention that the consent decree issued in Atchison bars BZA jurisdiction over the subject application.

36. By memorandum dated February 18, 1991, the Zoning Administrator indicated that the construction of trailers on the subject site does affect the allowable percentage of lot occupancy. The Zoning Administrator indicated that a total lot occupancy of 6,593.95 square feet or 40 percent is permitted on the subject site. The total lot occupancy of 7,994 square feet, including the existing structure and the four trailers, exceeds the permitted lot occupancy by 1,400.15 square feet or 21.23 percent.

37. Proposed findings of fact were submitted by several parties to the application on February 4, 1991. Counsel for the

applicant, by letter dated February 4, 1991, requested the Board to reopen the record for additional factual submissions and findings of fact. Counsel was of the opinion that the applicant's right of due process was seriously impinged by the Board's deadline for the filing of proposed findings because the written transcript of the public hearing was unavailable. The Board notes that it is not unusual for a case to be considered and decided by the Board prior to the receipt of a written transcript. In this instance it is unfortunate that, due to administrative and contractual problems, no transcript was prepared and delivered to the Board at all. The Board further notes that all written materials submitted are available in the public record and that all parties to the case were in attendance on the date of the public hearing.

38. By letter dated February 4, 1991, the representative of the Columbia Heights Neighborhood Coalition responded to the post-hearing submissions as follows:

- a. The advisory neighborhood council proposed by the applicant would not be truly representative of the community and would be ineffective in addressing the interests and concerns of area residents.
- b. The applicant failed to submit adequate evidence that the facility has been brought into compliance with the D.C. Building and Fire Codes.
- c. The trailer specifications submitted by the applicant do not accurately reflect the specifications for the trailers currently located on the site.

39. By letter dated March 4, 1991, the representative of the Columbia Heights Neighborhood Coalition (CHNC) responded to the Zoning Administrator's memorandum of February 18, 1991. The CHNC representative was of the opinion that the Zoning Administrator's ruling required the applicant to seek variance relief from the lot occupancy requirements, however, the applicant has not done so. The CHNC was further of the opinion that, even if the applicant were to seek such variance relief, the burden of proof could not be met insofar as excessive density at the subject premises would have a detrimental effect on the immediate neighborhood.

40. By letter dated February 25, 1991, counsel for the applicant argued that the memorandum dated February 7, 1991, from Corporation Counsel relative to the Board's jurisdiction in the instant case was lacking in that it failed to address provisions of Section 7 of the D.C. Comprehensive Plan Amendments Act of 1989 and that it is unclear as to the Board's jurisdiction over pre-existing conflicting land uses.

41. By letter dated March 4, 1991, counsel for the applicant,

in response to the Zoning Administrator's memorandum of February 18, 1991, argued as follows:

- a. The Zoning Regulations do not apply to D.C. owned property by operation of Section 7 of the Comprehensive Plan Amendments Act of 1989.
- b. Even if the lot occupancy requirements were applied to the site, no finding of a specific land use category has been made for the facility and the facility may be allowed a maximum lot occupancy of 60 percent as applied to public school buildings.
- c. The legal status of the mobile emergency shelter units as buildings or structures is uncertain.
- d. The facility should have nonconforming status because it existed prior to the 1989 adoption of the Comprehensive Plan Amendment Act.

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, the granting of which requires a showing, through substantial evidence, of compliance with the provisions of 11 DCMR 305 and 3108.1. The Board concludes that the applicant has substantially met the requisite burden of proof.

The Board concludes that the applicant has demonstrated compliance with the provisions of 11 DCMR 305.2, 305.3, 305.5, and 305.9. However, the Board is persuaded by the testimony of the Advisory Neighborhood Commission (ANC) and the opposition that the current operation of the subject facility has created adverse impacts on the immediate area and that the cumulative effect of the proliferation of facilities in the area, while not within 500 feet of the subject site, has resulted in adverse impacts on the community in terms of traffic, noise and operations. There is no evidence of any on-site parking to serve the needs of occupants, employees and visitors to the site, however, no adverse impact due to the lack of on-site parking was established. The Board concludes that the program goals and objectives of the subject facility are vital to the District of Columbia. However, the proposed resident capacity is too dense for the subject site. The Board concludes that the program goals and objectives can more appropriately be achieved by a facility of a smaller size at the subject site.

As to the variance issues relative to the location of the trailers on the site, the Board concludes that while the Zoning

Administrator has determined that variance relief would be required, there is no evidence that the applicant was informed of that need during the application process and no request for such relief was made before the Board. Therefore, the issues relative to the variance relief are currently beyond the jurisdiction of the Board in this application.

The Board concludes that it has afforded the Advisory Neighborhood Commission the "great weight" to which it is entitled as evidenced by the conditions hereinafter imposed.

The Board further concludes that the requested relief, as hereinafter conditioned, can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not adversely affect the use of neighboring property. Accordingly, it is hereby **ORDERED** that the application is **GRANTED**, in part, **SUBJECT**, to the following **CONDITIONS**:

1. The number of residents at the facility shall not exceed 84.
2. The existing use of the trailers on-site shall be discontinued.
3. The applicant shall establish an ongoing liaison with the ANC and members of the community and shall meet with the community at least once per year. All property owners within 200 feet of the site shall be notified in advance of such meeting and shall be invited to attend.

VOTE: 4-0 (Sheri M. Pruitt, Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to grant, in part; Tersh Boasberg not present, not voting).

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

ATTESTED BY:



MADELIENE H. ROBINSON  
Acting Director

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

NOV 27 1991

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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.

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 APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15412Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15412

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 27 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 15412 ATTESTATION SHEET  
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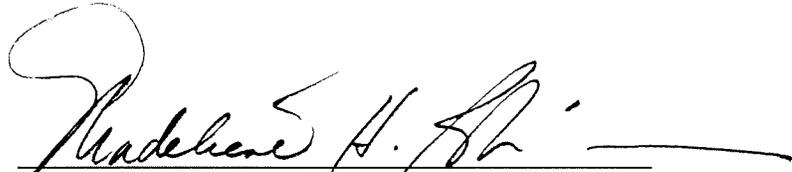
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Acting Director

DATE: NOV 27 1991

15412Att/bhs