

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15618 of the Sixteenth Street Heights Civic Association, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph F. Bottner, Zoning Administrator, made on August 6, 1991 on permits No. B351621 and B349935, to the effect that to increase the number of parking spaces and add to existing pavement on parking lot would adversely impact on the community and is not in compliance with the Zoning Regulations and the Comprehensive Plan for a church in an R-2 District at premises 1400 Nicholson Street, N.W., (Square 2723, Lot 44).

HEARING DATE: February 19, 1992
DECISION DATE: March 4, 1992

ORDER

SUMMARY OF EVIDENCE:

1. The appeal was filed on October 9, 1991, pursuant to 11 DCMR 3105.1 and 3200.2. The appeal alleged that the Zoning Administrator erred in issuing Permit Nos. B-349935 and B-351621 authorizing the revision of an accessory church parking lot as necessitated by the change of capacity of the principal use as a result of the installation of pews in the church sanctuary instead of fixed seating. The appeal alleges that the permits were issued in an untimely manner; that the resultant parking layout was not in compliance with the applicable provisions of the Zoning Regulations; and, that the parking lot was deficient in terms of compliance with other applicable municipal regulations and laws with respect to the number of parking spaces provided, configuration, and access.

2. The appellant is the Sixteenth Street Heights Civic Association. At the public hearing of February 19, 1992, the Chairperson ruled that Charles Willoughby of 1408 Manchester Lane would 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 parsonage, a church and a parking lot. The owner of the property, Iglesia Evangelisa de Apostoles y Profetos, proposes to replace the existing fixed seating in the church sanctuary with pews which would increase the seating capacity in the church sanctuary from

225 to 280. The proposed increase in seating capacity results in an increase in the number of on-site parking spaces required by 11 DCMR 2101.

5. The Zoning Regulations require that a church in an R-2 District 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 eighteen inches of benches, if benches are provided, shall be considered one seat."

6. Based on the existing seating capacity of 225 in the church sanctuary, the property owner is required to provide 23 on-site parking spaces. The property owner currently provides 26 on-site parking spaces. Based on the increase in the proposed seating capacity of the church sanctuary, the property owner is required to provide additional on-site parking spaces. The property owner proposes to reconfigure the existing parking area to provide 28 parking spaces on-site.

7. By its Order No. 14402, dated August 29, 1986, the Board upheld the decision of the Zoning Administrator in determining the number of parking spaces required for the subject property when the church was originally constructed. The Board found that the Zoning Administrator correctly computed the required parking spaces pursuant to the provisions of Section 2101.1 at the rate of one parking space per ten seats because the church provided fixed seating in the form of folding chairs fastened to the floor. The Board further found that the aisle widths, as proposed, were not excessive and did not create a significant amount of excess floor area.

8. Building Permit No. B349935, dated May 21, 1991, was issued for the subject property and allowed the property owner to "Change parking spaces and add to existing pavement at 1400 Nicholson Street, N.W. as per plans. No plumbing, no structural, no electrical work to be done. No plumbing/no gasfitting/no mechanical."

9. Building Permit No. B351621, dated August 8, 1991, was issued to "Revise Permit B349935 to show 28 car spaces as per plans and revise planting areas. No plumbing or gasfitting."

10. The appellant asserted that the Zoning Administrator issued the permits in question without first determining the occupancy capacity of the church. In determining the required parking for the expansion of the church, the Zoning Administrator relied on the number of proposed seats as requested by the church.

11. The appellant argued that the permits were issued untimely in violation of Section 2101.1. Specifically, the

parking permit can be issued, the occupancy capacity of the church must be determined. The appellant contended that no such determination was made by the Zoning Administrator or the church. The appellant also contended that while seating capacity may vary depending on seating configuration, occupancy capacity does not vary, absent a change in the structure itself, and should be computed based on the total square footage of the main sanctuary.

12. In support of its contention that the issuance of the permits violates Section 2101.1, the appellant relied on the language of Section 2101.1 which states that for every "ten seats of occupancy capacity in the main sanctuary" one parking space is required. The section further states that where 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." The appellant contended that the Zoning Administrator and the church merely used the proposed seating in determining the required parking. The appellant contended that the occupancy capacity of the sanctuary, including the pulpit area, as demonstrated by the diagram and calculations submitted by appellant, is in excess of 380, therefore, a minimum of 38 parking spaces would be required.

13. The appellant argued that the church's computation of the seating capacity of the sanctuary, which includes eight folding chairs in the pulpit area and uses the standard of 18 inches of bench equalling one seat or 272 seats for a total seating capacity in the sanctuary of 280, is erroneous in that it ignores the plain language of Section 2101.1 by not considering the surplus usable space in the sanctuary.

14. The appellant argued that the language of the section speaks of "usable" space, not space that one plans to use but rather space that could be used. Thus usable space includes, among other space, space between the first pew and the edge of the pulpit, as well as the pulpit space itself.

15. In further support of its contention that the occupancy capacity of the church is in excess of 380, the appellant contended that a close inspection of the seating plans for the church revealed an excessive amount of usable space and also that several pews were deliberately reduced in size. In this vein, the appellant contended that in May 1991, the church submitted plans proposing to install 26 pews in the exact same nave area of the sanctuary as its current plan does. That plan provided for 24 pews accommodating 11 persons each and two pews accommodating eight persons each for a total of 280 persons and did not call for any seating on the pulpit. The pews numbered 13 and 14 on that plan which were originally proposed to accommodate 11 persons each, have been revised to accommodate six persons each in the current plan.

16. The appellant further alleged that the issuance of the permits violated the provisions of Section 2108 by reducing the amount of required parking provided without Board of Zoning Adjustment review and approval. Specifically, the appellant argued that, based on its calculation of the occupancy capacity of the main sanctuary at approximately 380 persons, 38 parking spaces should be required. The issuance of the permits which provides for 28 parking spaces results in a reduction in the amount of required parking with no opportunity for review of the specified criteria for such reduction. The specific criteria would require review and assessment of such factors as "the quantity of existing public, commercial, or private parking other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use"; "the amount of traffic congestion which can reasonably be expected to be created in the neighborhood"; and "the maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time". The appellant further argued that the criteria related to the maximum number of persons who could use a facility is particularly significant because it constitutes the definition of "occupancy capacity".

17. The appellant argued that the decision of the Board in Appeal No. 14402, dated August 29, 1986, is not controlling in the instant case. In Appeal No. 14402, the Zoning Administrator and the appellee determined that the occupancy capacity of the church was 225 persons based on fixed seating. The appellant argued that if benches are used, there will be an increase in "usable space" in the church and any such additional space should be included in determining the occupancy capacity after the allowance for aisle space.

18. The appellant argued that the parking layout approved by the Zoning Administrator does not comply with the requirements of the Zoning Regulations and municipal code requirements as follows:

- a. Parts of the aisle area used as access to the church parking lot are located within public space. The appellant argued that the church does not have a permit for the use of the public space.
- b. The aisles for the compact car parking spaces on Nicholson Street are too narrow. The appellant argued that the existing aisle width measures 18.5 feet rather than 20 feet as required by the Zoning Regulations.
- c. The handicapped parking spaces provided on the lot do not meet the requirements of the Architectural

Barriers Act of the District of Columbia, DC Law 3-76 in terms of size, location and unobstructed access to the handicapped entrance to the church.

- d. The sidewalk along Manchester Lane directly adjacent to the parking lot does not have adequate protection because no barrier exists, such as wheel bumper guards, curbs, guard rails or screening, to preclude vehicular encroachment into the public pedestrian area in violation of Section 2117.7.
- e. Two of the driveways accessing the parking lot from Manchester Lane and from 14th Street have inclines greater than 12 percent in violation of Section 2117.8(a).
- f. The parking spaces reserved for compact cars are not visibly marked as required by Section 2115.4.

19. The appellant and intervenor argued that the neighborhood would suffer adverse impacts as a result of the proposed increase in occupancy capacity of the church as approved by the Zoning Administrator, as follows:

- a. 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 by ten (10) parking spaces.
- b. 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 and the current operation of the subject church.
- c. The pull-in parking spaces will create traffic congestion and threaten the safety of pedestrians in the public space.
- d. The expansion of the church use should not be permitted unless the city conducts an impact analysis of the project.

20. The appellant further argued that the Comprehensive Plan and the pending Ward Plan explicitly require the strict enforcement of the provisions of the Zoning Regulations on non-residential uses in residential areas to help mitigate the impacts of such uses on the surrounding neighborhood.

21. In BZA Appeal No. 14402 dated August 29, 1986, which is incorporated herein by reference, the Board found that the Zoning Administrator applied the correct formula in computing the number of parking spaces required for the construction of the subject church. At the time of construction, the church provided 225 fixed seats. The Zoning Administrator computed the required parking based on one parking space per each ten fixed seats. As indicated in Finding of Fact No. 18 of the order, the Zoning Administrator noted that if a building permit were issued 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.

22. Based on review of building permit applications and plans submitted by the church, the Zoning Administrator issued Building Permit Nos. B-349935 and B351621 authorizing the change in parking layout necessitated by the installation of pews. The Zoning Administrator determined that the actual installation of pews would not be permitted until approval and execution of the required change in the on-site parking.

23. Based on the prior zoning history of the subject site, the Zoning Administrator was in contact with community residents regarding the building permit process and his decision on the building permit applications. Being mindful of the residents' concerns, the Zoning Administrator approved the building permit application in phases, the first phase being the parking layout and the second phase being the actual installation of pews.

24. Building Permit No. B349935, issued May 21, 1991, related to a change in the parking layout and additional paving, as per plans. Building Permit No. B351621, issued on August 6, 1991 also related to the parking lot and revised the original layout to show 28 parking spaces and further revised the proposed landscaping area. No building permit was issued to permit the actual installation of pews as of the date of the public hearing in the instant appeal.

25. The Zoning Administrator concluded that the proposed pews provided a seating occupancy, calculated based on each eighteen inches of bench space, of 272 seats. In addition, eight folding chairs were provided in the nave area for a total of 280 seats.

Therefore the Zoning Administrator determined that the church must provide 28 on-site parking spaces in order to comply with Section 2101.1 of the Zoning Regulations.

26. Upon determining the seating capacity of the main sanctuary, the Zoning Administrator reviewed the plans to ensure that the proposed interior aisle widths were not excessive. The Zoning Administrator concluded that the aisle widths and maneuvering space as proposed by the church, while larger than the minimum required by the building code, were not excessive and did not result in a gross surplus of square footage in the main sanctuary.

27. The Zoning Administrator testified that if the calculations of the aisle widths had resulted in an excessive amount of square footage in the main sanctuary after the allowance for pew seating as proposed, the parking computations would have been based on the 18 inches of pew space plus one parking space per each seven square feet of surplus floor area reduced by aisle widths.

28. The Zoning Administrator testified that his interpretation of the language of Section 2101.1 with regard to the instant case was based on the past application of the language setting forth parking requirements for other places of public assemblage which is similar to the parking requirements for churches adopted March 1, 1985 and now in effect, as well as the Board's decision in Appeal No. 14402.

29. Based on concerns expressed by the appellant as to the configuration of the proposed parking lot, the Zoning Administrator noted that inspection of the property revealed that (a) the driveway does not exceed 25 feet in width; (b) the use of public space as aisle space to access parking was authorized by DPW under Permit No. B422264, dated June 3, 1987; (c) the compact car spaces were marked in a temporary fashion; and (d) the proposed landscaping exceeds the minimum five percent requirement.

29. The Zoning Administrator concurred with the community's opinion that the proposed parking lot may not be in complete compliance with the applicable requirements regarding the lack of a proper barrier between the parking space located along Manchester Lane and the adjacent public space, and grading in excess of 12 percent in the driveways from Manchester Lane and 14th Street.

30. The Zoning Administrator testified that the D.C. Surveyor, at the request of the Department of Consumer and Regulatory Affairs, surveyed the grade conditions of the subject site. The survey showed two areas that were sloped in excess of 12 percent due to the location of storm drains on the property. With respect to the barrier between the parking space and public

space, the Zoning Administrator was of the opinion that an appropriate barrier would be provided, if required. Inspections of the site are made periodically throughout the process to ensure compliance with applicable codes and regulations.

31. With respect to the issue regarding the use of public space to access on-site parking, the Zoning Administrator stated that such access is permitted as indicated in a memorandum dated September 29, 1986 from the District of Columbia Department of Public Works to Department of Consumer of Regulatory Affairs and as evidenced by the issuance of a public space Permit No. B422264 dated June 7, 1987.

32. With regard to the issues regarding handicapped parking spaces, the Zoning Administrator testified that the size, location and accessibility of such spaces are not governed by the Zoning Regulations.

33. By letter dated February 11, 1992, and by representative at the public hearing, Advisory Neighborhood Commission 4A supported the position of the appellant. The ANC's position was reached based on the opposition expressed by the community to the expansion of the church. The ANC recommended that the permits be withdrawn based on the alleged violation of the public space and the community impacts, including traffic and noise, which were not considered prior to the issuance of the permits.

34. Counsel for the property owner participated in the public hearing in support of the Zoning Administrator's decision with respect to the issuance of the building permits and his determination of the number of parking spaces required for the proposed church use. In addition, counsel for the property owner indicated that all aspects of the parking lot were in compliance with the applicable regulations or would be brought into compliance with said regulations prior to the installation of pew seating in the sanctuary.

FINDINGS OF FACT:

1. The proposed use of the site as a church is permitted as a matter-of-right in the R-2 District provided that the use complies with all applicable Zoning Regulations and code requirements. The change in the type of seating provided and the capacity of such seating does not change the matter-of-right nature of the use of the site for church purposes.

2. The means of computation used by the Zoning Administrator in determining the number of parking spaces required for the use as a result of the installation of pews in the sanctuary is in keeping with the language of Section 2101.1 of the Zoning Regulations.

3. The Zoning Administrator's interpretation of the language of Section 2101.1 of the Zoning Regulations is consistent with the Board's decision in BZA Appeal No. 14402, dated August 29, 1986. The Board notes that neither the language nor the substance of the Zoning Regulations relative to required parking for a church use in the R-2 District has been changed since the Board's decision in BZA Appeal No. 14402.

4. The property owner is not seeking any variance or special exception relief before the Board. Therefore, the criteria specified for Board review in such instances are not applicable in the instant case.

5. The proper permits necessary to install the proposed pew seating in the main sanctuary will not be approved until the parking lot has been completed and approved is in compliance with all applicable code and zoning requirements. Should the parking lot fail to meet those criteria, the property owner would need to revise the proposed seating or parking layout until all such requirements are met or seek the applicable relief from the appropriate municipal agencies, possibly including special exception or variance relief.

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 properly based his decision to issue the building permits on the plans presented by the property owner evidencing a change in the type of seating in the main sanctuary and the reconfiguration of the parking lot.

The Board concludes that the Zoning Administrator's interpretation of the language of the Zoning Regulations relative to the criteria for determining the number of parking spaces required for the proposal is consistent with the Board's decision in BZA Appeal No. 14402 and with the Zoning Administrator's prior interpretation of similar language contained in Section 2101.1 setting forth similar parking requirements as applicable to other uses.

The Board concludes that no probative evidence was presented by the appellant to prove that the approved plans would not be able to comply with applicable regulations and codes nor that proper review was not provided. The Board notes that the issuance of the subject permits were not subject to review and approval by the Board since no special exception or variance relief was required. The Board further concludes that the Zoning Administrator's determination that approval and execution of the parking layout must be completed prior to the actual installation of the pew

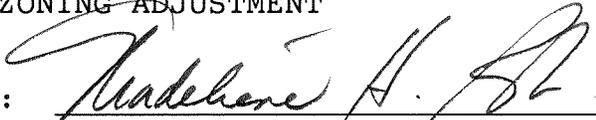
seating will ensure that the parking layout shall be in compliance with the applicable provisions of the Zoning Regulations.

The Board concludes that the appellant has failed to present evidence to the Board which indicates that the Zoning Administrator failed to properly interpret the provisions of the Zoning Regulations or that he was in error in issuing the subject building permits based on plans submitted for review by the property owner. Accordingly, it is hereby **ORDERED** that the appeal is **DENIED** and that the decision of the Zoning Administrator in issuing Building Permit Nos. B351621 and B349935 is hereby **UPHELD**.

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell to deny; Angel F. Clarens and William L. Ensign to deny by proxy; Carrie L. Thornhill 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:

AUG 7 1992

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15618

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 7 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:

Charles J. Willoughby
1408 Manchester Lane, N.W.
Wash, D.C. 20011

Lawrence Chatman
1400 Montaque Street, N.W.
Wash, D.C. 20011

Jack E. Nelson
1441 Manchester Lane, N.W.
Wash, D.C. 20011

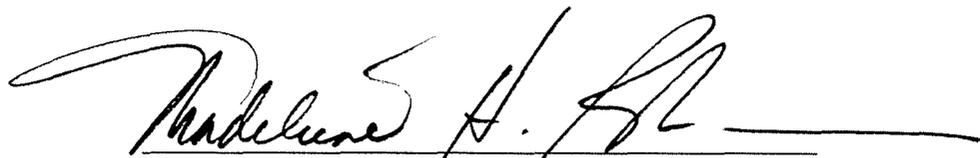
Jacquelyn Helm
5915 16th Street, N.W.
Wash, D.C. 20011

Walter Broderick
1641 Montaque Street, N.W.
Wash, D.C. 20011

Sarah Smith
Davis, Polk & Wardwell
1300 I Street, N.W.
Wash, D.C. 20005

Rudolph Gannascoli
1604 Madison Street, N.W.
Wash, D.C. 20011

Judith Anderson, Chairperson
Advisory Neighborhood Commission 4-A
7600 Georgia Avenue, N.W., #205
Washington, D.C. 20012


MADELIENE H. ROBINSON
Acting Director

DATE: AUG 7 1992