

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15826 of Alvin Mitchell, pursuant to 11 DCMR 3108.1, for a special exception under Section 335.1 to establish a youth rehabilitation home for ten youths ages 13-19 years and 12 staff, basement through the third floor, in an R-4 District at premises No. 2 T Street, N.E. (Square 3509-S, Lot 12).

HEARING DATE: June 9, 1993  
DECISION DATE: September 22, 1993

DISPOSITION: The Board GRANTED the application, with conditions, by a vote of 3-0 (Sheri M. Pruitt and Angel F. Clarens to grant; Maybelle Taylor Bennett to grant by proxy; Paula L. Jewell abstaining; Carrie L. Thornhill not voting, not having heard the case).

FINAL DATE OF ORDER: November 18, 1993

RECONSIDERATION ORDER

The Board granted the application subject to nine conditions by its order dated November 18, 1993. On November 29, 1993, a representative of the parties in opposition to the case filed a timely motion for reconsideration of the Board's decision in the case and for a stay of the effectiveness of the Board's order pending consideration of the motion for reconsideration. The specific grounds for the motion are set forth as follows:

- a. The applicant was provided abundant opportunity to provide evidence in support of his request, including reopening the record after the Board had declared the record closed on June 9, 1993. However, evidence provided by the applicant was primarily verbal, anecdotal, and unsubstantiated. The speciousness of such verbal evidence is indicated by the flagrant violation of regulation and law in initiating operations and residential treatment of youth on November 2, 1993 in the absence of (a) a BZA Final Order, (b) certificate of compliance with applicable building, fire and life safety codes, and (c) a certificate of occupancy.
- b. The applicant alleged that the facility would have no adverse impact on traffic and parking, but failed to substantiate this claim with a traffic impact study conducted by an appropriate professional expert.

- c. The applicant failed to demonstrate an intent to meet specific building, fire and life safety code requirements. Consequently, there is no basis for the Board's conclusion that the proposed facility will meet all applicable code and licensing requirements.
- d. The applicant failed to present any procedures or a strategic plan for assuring that its program of discipline, counseling and therapy would result in an abscondence rate less than that reported for another of its facilities located at 1301 Allison Street, N.W. a abscondence note could result in an adverse impact on the immediate area.
- e. The applicant failed to provide adequate documentation required by its District contract that its program of discipline, counseling and therapy will operate both to prevent the youth from adversely impacting the surrounding neighborhood, and to prevent the impact that crime and other adverse neighborhood conditions will have on the residents of the facility. Due to the absence of such documented evidence, the Board had no basis for reaching its conclusion regarding the positive impacts of the program.
- f. Due to the Board's failure to receive reports from numerous District government agencies, there was little basis for determining whether the CBRFs currently operating in ANC 5C collectively have had an adverse impact on the neighborhood, or if the addition of the proposed youth rehabilitation home to the existing cadre of similar facilities will increase the collective adverse impact on the neighborhood. In this regard it should be noted that crime reports for the past 90 days, indicate there were 21 incidents in the 1300 block of Allison Street, N.W., and on September 1, 1993, that police responded to a call regarding an unauthorized act related to a controlled substance at 1301 Allison Street, N.W.
- g. The Board failed to respond to the concerns of ANC 5C residents regarding the inappropriateness of the location of the proposed youth rehabilitation home.
- h. During the past 30 days, neighbors of No. 2 T Street, N.E. on numerous occasions requested ticketing of cars blocking sidewalks at that location. To date, on-premises parking at No. 2 T Street has not been reconfigured and two cars are parking end-to-end rather than side-by-side.

- i. The applicant failed to provide substantiated evidence of its procedures for assuring removal of trash and debris. During the past 20 days, neighbors of No. 2 T Street, N.E. have registered complaints with DCRA regarding trash and debris at No. 2 T Street, N.E.
- j. The Board has failed to respond to each and every concern of ANC 5C and by so doing, the Board has failed to demonstrate that it has accorded ANC 5C the great weight to which it is entitled.
- k. The legality of the BZA decision is questioned pending receipt of written BZA rules related to the conditions and procedures for absentee votes, and associated required documentation related to the November 22, 1993 decision on No. 2 T Street, N.E.

By response filed on December 8, 1993, the applicant opposed the motion for reconsideration. The applicant contended that sufficient, substantial evidence was presented to the Board to warrant the conditional approval of the special exception relief for a two-year period. The applicant was of the opinion that the specific issues cited by the opposition in support of the motion for stay and reconsideration were thoroughly reviewed and considered by the Board during the public hearing process and further that the conditions imposed by the Board's order directly address many of the issues cited in the motion.

Pursuant to Subsection 3332.8, those Board members who did not participate in the original decision in this application were provided with copies of the transcript and record of the subject case for review prior to consideration of the motion for reconsideration.

The Board notes that issues raised by the opposition as set forth in items a, f, h, and i relate to situations or conditions which have occurred subsequent to the Board's consideration of the application and are, therefore, not part of the public record in the subject case. The Board would suggest that the opposition seek investigation and enforcement measures from appropriate D.C. government agencies with respect to any violations occurring at the subject premises.

With respect to Item f, the Board notes that Subsection 3318.6 provides that "in an application where a referral is made to a governmental department or office as required by this title, if no report is received in the record and if the time period specified in Subsection 2509 of this title has elapsed, then the Board may

proceed to decide the application based on the record not including the report of the governmental department or office."

With respect to Item K, Subsection 3306.10 of the Zoning Regulations provides that a member absent at the decision meeting may cast an absentee vote only if the member attended all of the hearings on the application. The Board noted that Maybelle Taylor Bennett was present at the hearing of the case and properly cast an absentee vote at the Public Meeting of September 22, 1993.

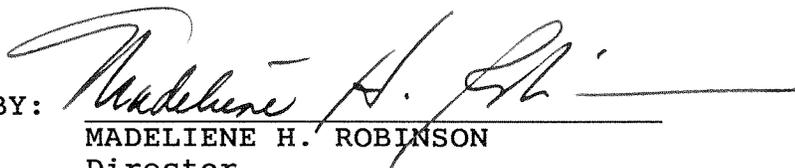
Upon consideration of the motion, response thereto, the record in the case, and its final order, the Board concludes that it made no error in deciding the application. The Board concludes that the motion raises no materially different issues and provides no evidence of a substantive nature that the Board has not previously considered and addressed in its final order. The Board's decision was based on consideration of all the evidence presented by both the applicant and the opposition. The fact that the Board and the movant in this instant came to different conclusions does not make the judgment of the Board arbitrary, capricious or unlawful. Accordingly, the motion for reconsideration is hereby DENIED.

DECISION DATE: December 22, 1993

VOTE: 4-1 (Maybelle Taylor Bennett, Craig Ellis, George Evans and Angel F. Clarens to deny; Laura Marie Richards opposed to the motion). Laura Marie Richards, George Evans and Craig Ellis read the record to participate in this action.

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

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Director

FINAL DATE OF ORDER:

FEB 4 1994

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."

15826Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15826

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on FEB 4 1994 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:

Alvin and Jacqueline Mitchell  
No. 2 T Street, N.E.  
Washington, D.C. 20002

Mary A. Green  
11 R Street, N.E., Apt. 201  
Washington, D.C. 20002

James D. Berry, Jr.  
Advisory Neighborhood Commission 5C  
1723 3rd Street, N.E.  
Washington, D.C. 20002

Portia Ware  
121 Quincy Place, N.E.  
Washington, D.C. 20002

Darryl Gorman, Esquire  
1923 N. Capitol Street, N.E.  
Washington, D.C. 20002

Bertha Holliday, Ph.D.  
1719 First Street, N.W.  
Washington, D.C. 20002

Commissioner Ellen Carter-Davis  
Advisory Neighborhood Commission 5C  
37 T Street, N.E.  
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301 O Street, N.W.  
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Advisory Neighborhood Commission 5C  
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Lawrence Guyot  
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MADELIENE H. ROBINSON  
Director

DATE: FEB 4 1994  
Att15826/bhs