

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15831 of the Methodist Home for the District of Columbia, pursuant to 11 DCMR 3108.1, for special exceptions under Sections 218 and 219 to allow an addition to a community residence facility and health care facility in an R-1-A and R-5-D Districts at premises 4901 Connecticut Avenue, N.W. (Square 2033, Lot 16).

HEARING DATES: July 21 and September 22, 1993  
DECISION DATES: October 6 and 14, 1993

DISPOSITION: The Board GRANTED the application by a vote of 3-1 (Carrie L. Thornhill and Paula L. Jewell to grant; Sheri M. Pruitt to grant by absentee vote; Angel F. Clarens opposed to the motion).

FINAL DATE OF ORDER: May 27, 1994

RECONSIDERATION ORDER

The Board granted the application by its order dated May 27, 1994 subject to 15 conditions. At its public meeting of September 7, 1994, the Board waived Section 3332.2 of its Rules to accept a motion for reconsideration, rehearing and stay which was received later than ten days after the filing and service of the written order of the Board.

On June 27, 1994, counsel for the Methodist Home United Neighborhood Committee, a party in opposition to the application, filed a motion for reconsideration and rehearing of the subject application and for a stay of the Board's final order pending the Board's disposition of the reconsideration and rehearing motion. In support of the motion for reconsideration, counsel argued as follows:

- a. The Board failed to adequately address reasonable alternatives to the proposed addition pursuant to 11 DCMR 218.7 which requires a finding by the Board that the "program goals and objectives of the District cannot be achieved by a facility of a smaller size at the subject location" and, that "there is no other reasonable alternative to meet the needs of that area of the District."
- b. The Board erred in finding that the proposed addition would not have an adverse impact on the neighborhood.

1. The Board erred in finding that adverse impact could be mitigated by landscaping and failed to consider the adverse impact of the landscaping changes themselves.
  2. The Board erred in finding that there would be no adverse impact in terms of noise with respect to the cooling tower located on the roof of the building.
  3. The Board erred in finding that the proposal would not have a significant adverse impact on existing traffic conditions at the intersection of Connecticut Avenue and Ellicott Street.
  4. The Board erred in finding that the size, bulk, height and siting of the structure would not adversely impact the light and air to surrounding residences as well as the aesthetics of the neighborhood.
- c. The Board erred in finding that the proposed on-site parking would be adequate to provide for the needs of residents, employees, and visitors to the facility.
  - d. The application was deficient in that the plans submitted by the applicant did not contain sufficient, accurate details necessary to enable the Board to render a fully informed judgment.
  - e. The Board erred in its determination that the facility complied with all licensing requirements.
  - f. The decision rendered by the Board on May 27, 1994 is invalid because two of the three members who voted in favor of the application were no longer members of the Board.
  - g. The Board improperly relied on the written report of the Advisory Neighborhood Commission despite the objections of the Neighborhood Committee.

In support of the motion for rehearing, counsel for the opposition noted that the Board failed to consider the letter and architectural drawings submitted by the opposition in response to the applicant's post-hearing submission. Counsel argued that rehearing would allow the Board an opportunity to review this information as "new evidence" and that it could not reasonably be presented at the public hearing since it addresses post-hearing materials.

The opposition further requested the Board to stay its decision in the application pending consideration of the foregoing motions. Counsel argued that the Neighborhood Committee would suffer irreparable harm if construction proceeds as currently approved and affirmative action on the motion to reconsiderations or rehear the case results in substantial alterations or modifications to reduce the adverse impact of the project. Counsel further argues that the granting of a stay would delay construction slightly, but that the applicant would face greater harm if it began construction and then the application was denied or modified upon reconsideration or rehearing by the Board.

By letter dated July 7, 1994, counsel for the applicant opposed the motion for reconsideration, rehearing and stay of the Board's decision. Counsel for the applicant argued that the motion for reconsideration should be denied based on the following:

- a. The opposition has misconstrued the requirement of 11 DCMR 218.7 as applying to alternative designs for the structure rather than "reasonable alternatives to meet the program needs of that area of the District".
- b. Th Board entertained extensive testimony on the issues of noise, traffic, size, operations or the number of similar facilities in the area and specifically addressed those issues in its written order.
- c. The drawings submitted by the applicant contain all of the basic architectural information necessary for an informed decision on zoning issues.
- d. Compliance with all applicable licensing requirements will be confirmed during the building permit and license issuing process.
- e. The May 27, 1994 written decision reflects the decision made by the four Board members who heard the case and serves only to memorialize the oral decision of the Board made at its Public Meeting of October 14, 1993.
- f. The Board previously considered and ruled on the issues relevant to the validity of the ANC report.

With respect to the motion for rehearing, counsel for the applicant argued that the opposition does not offer any new evidence which could not reasonably have been presented at the public hearing. The referenced filings submitted by the opposition went beyond the scope of the post-hearing submissions requested by the Board and were properly returned to the opposition.

With respect to the motion to stay, counsel for the applicant argued that the opposition failed to demonstrate that it would suffer irreparable harm if construction proceeds during the pendency of the motion and any reconsideration or rehearing granted pursuant thereto, nor is there ample indication that the opposition is likely to prevail in the long run.

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

Upon consideration of the motion, response thereto, the record in the application and its final order, the Board concludes that it has made no error in deciding the application. The Board concludes that it has correctly applied the criteria set forth in 11 DCMR 218.7 relative to the need for the facility and that further review of alternate ways to construct the addition is not necessary and will not alter the Board's finding that the net need in the District for skilled nursing beds justifies a facility of the proposed size and that a facility of a smaller size will not meet the program goals and objectives of that area of the District. The Board concludes that it considered all of the evidence presented with respect to potential adverse impacts and that its written order thoroughly and specifically addresses each of those issues. The Board concludes that its decision was based on a complete and adequate record. With respect to the architectural plans and compliance with licensing requirements, the Board notes, that the level of detail required will increase as the applicant proceeds through the building permit and licensing processes and, further, that required licenses and permits will not be issued by the reviewing agencies unless all code and licensing requirements are satisfied. The Board concludes that the written order, dated May 27, 1994, represents the decision made by the Board on October 14, 1993 and that no further action by the Board related to this case occurred between its public meeting of October 14, 1993, and the issuance of the final order on May 27, 1994. The Board concludes that it adequately addressed the issue of acceptance of the ANC report at the public hearing.

The Board further concludes that the motion for rehearing does not offer any new evidence which could not reasonably have been submitted at the public hearing. The opposition's motion merely seeks to include in the record its responses to a post-hearing submission by the applicant. The Board notes that it specified the items to be submitted by the parties at the public hearing and noted that responses were not needed. In addition, the opposition did not raise any objections to the Board's ruling at that time.

The Board concludes that the motion raises no materially different issues nor provides any evidence of a substantive nature that the Board has not previously considered and adequately addressed in its written order. The Board's decision was based on its consideration of all evidence presented by both the applicant and the opposition. The fact that the Board and the opposition reached different conclusions does not make the judgment of the Board arbitrary, capricious or unlawful. It is therefore **ORDERED** that the motion for reconsideration or rehearing is hereby **DENIED**. The motion for stay of the effectiveness of the Board's order pending the disposition of the motion for reconsideration or rehearing is therefore moot.

DECISION DATE: September 7, 1994

VOTE: 5-0 (Maybelle Taylor Bennett, Susan M. Hinton, Laura M. Richards, and Angel F. Clarens to deny; Craig Ellis to deny by absentee vote).

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

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Director

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

SEP 26 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."

Ord15831/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15831

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 26 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:

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MADELIENE H. ROBINSON  
Director

DATE: SEP 26 1994

15831Att/bhs