

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15901 of Milton C. Douglas, Jr.; Miriam C. Douglas; and Mark D. Douglas; pursuant to 11 DCMR § 3108.1, for a special exception under section 335 to establish a youth rehabilitation home of eight youths, ages 14 to 18 years and a rotating staff from an existing youth residential care home in the basement through the second floor in an R-4 District at premises 597 Columbia Road, N.W. (Square 3051, Lot 813).

HEARING DATES: January 26, 1994; February 23, 1994

DECISION DATES: April 6, 1994; April 20, 1994; November 6, 2001; December 4, 2001

DECISION AND ORDER

Milton C. Douglas, Jr.; Miriam C. Douglas; and Mark D. Douglas filed an application with the Board of Zoning Adjustment on September 30, 1993, for a special exception under 11 DCMR § 3108.1 (1995) (re-numbered § 3104.1, 46 DCR 7853, 7891 (1999)) to establish a youth rehabilitation home under 11 DCMR § 335 (1995) at 597 Columbia Road, N.W. (Square 3051, Lot 813), located in an R-4 Zone District. The application was accompanied by a memorandum from the Zoning Administrator dated September 2, 1993, identifying the required zoning relief. After a public hearing, the Board denied the application on the grounds that the proposed facility did not meet the requirements of § 335.6, since it would adversely affect the neighborhood due to the number of youth rehabilitation homes already existing in the area.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 8, 1993, the Office of Zoning advised the D.C. Office of Planning; Advisory Neighborhood Commission (ANC) 1A, the ANC for the area on the north side of Columbia Road, within which the property that is the subject of this application is located; and ANC 1B, the ANC for the immediately adjacent area on the south side of Columbia Road, of the filing of the application.

The Board scheduled a public hearing on the application for January 26, 1994. Pursuant to 11 DCMR § 3317.3 (1994) (re-numbered § 3113.12, 46 DCR 7853 (1999)), the Board on December 16, 1993, mailed the applicants, the owners of all property within 200 feet of the subject property, ANC 1A, and ANC 1B notice of the hearing. Notice of hearing was also published in the *D.C. Register* on December 17, 1993, at 40 DCR 8625a. The applicants' affidavit of posting indicates that on January 2, 1994, a zoning poster was placed in front of the property, in plain view of the public.

Request for Continuance. ANC 1A filed a request dated January 19, 1994, asking the Board to continue the public hearing. The ANC required additional time to review the application, as the applicants had not provided the ANC or affected neighbors with sufficient information regarding the proposed use. After hearing from the ANC representative, concerned neighbors, and the applicants, the Board continued the case to February 23, 1994, to afford the applicants the opportunity to prepare a more detailed pre-hearing statement.

Applicants' Case. As a preliminary matter during the January 26, 1994, public hearing, the Board waived the 14-day filing requirement to receive the applicants' late-filed January 21, 1994, pre-hearing statement. The applicants submitted a supplemental pre-hearing statement on February 9, 1994. At the public hearing, Milton C. Douglas, Jr., introduced the proposed youth rehabilitation home use. Miriam C. Douglas described its educational component. Ebie Banks, a clinical social worker with Urban Resources, Inc., a mental health center, stated that the proposed facility would allow youths and their families to obtain services in the community.

D.C. Office of Planning (OP) Report. Pursuant to 11 DCMR § 335.9, OP referred the report to the Department of Public Works, the Department of Fire and Emergency Medical Services, the Metropolitan Police Department, the Department of Human Services, and the Office of the Coordinator of Community-Based Residential Facilities. After reviewing the proposed youth rehabilitation home, OP, in its report dated January 19, 1994, recommended conditional approval of the application for a five- year term. However, while OP reviewed the application to determine whether there was another community-based residential facility within the same square or within 500 feet of the proposed facility, OP did not analyze under 11 DCMR § 335.6 whether the proposed facility would have an adverse effect on the neighborhood because of the number of similar facilities in the area.

Department of Public Works (DPW). DPW submitted a report dated January 25, 1994, concluding that the proposed facility would have little or no measurable impact on the transportation system in the area, since the transportation needs of the facility could be met through on-site parking spaces and the use of the applicants' van for outside trips.

Metropolitan Police Department (MPD) Report. MPD, in its report dated October 23, 1993, indicated that it did not oppose the application, since the proposed use would not affect public safety in the immediate area or generate an increase in the level of police services being provided.

ANC Reports. ANC 1A did not file a report. ANC 1B filed a letter on February 23, 1994, indicating that at a public meeting, with a quorum present, the ANC voted to oppose the application.

Persons in Support of the Application. Lenwood Johnson, ANC 1A-10 Single-Member District Commissioner, submitted a written statement (Ex. 53) and oral testimony supporting the application. Mr. Johnson argued against the "not in my backyard syndrome," stating that the rehabilitation process could work in the Columbia Heights neighborhood; and that upon release, many youths would return to similar neighborhoods. Lawrence Guyot, an ANC 1B Commissioner, also supported the application due to the need for such services. In addition, the

applicants' February 9, 1994, pre-hearing statement contains a petition signed by numerous individuals in support of the application.

Persons in Opposition to the Application. Dorothy Brizill, president of the Columbia Heights Neighborhood Coalition, stated that the members of the Coalition voted unanimously to oppose the application. Their opposition was based on: (1) the concentration of existing community-based residential facilities in Columbia Heights; (2) the inappropriateness of the proposed location for a youth rehabilitation home due to the close proximity of a major open air drug market; (3) the proximity of the proposed home to an existing community-based residential facility in the same square at 524 Irving Street, N.W.; (4) the inability of the proposed site, a small frame house with limited off-street parking, to accommodate a program with eight residents and a rotating staff of 22 persons; and (5) the high rate of escapes from and the poor supervision in existing rehabilitation homes. The Coalition also detailed these concerns in a letter dated February 23, 1994.

The Pleasant Plains Civic Association submitted a letter dated February 22, 1994, opposing the application on the grounds that location of the proposed use, in close proximity to the Bruce-Monroe Elementary School was not appropriate, since the youth offenders might cause problems for young children going to and coming from school. It also stated that the neighborhood was saturated with community-based residential facilities.

Three of the ten ANC 1A commissioners submitted a letter dated February 16, 1994, asking the Board to deny the application. These commissioners expressed concern first that the proposed facility would exacerbate crime and drug trafficking in the area. Second, relying on the Comprehensive Plan, they stated that Ward 1 in general and Columbia Heights in particular are over-saturated with community-based residential facilities. Citing neighborhood concerns that senior citizens and families with children would feel uncomfortable about using neighborhood streets and even their own yards and front porches if the proposed facility were allowed, they urged the Board to carefully weigh the potential impact of the proposed use on the residential character of the neighborhood. Frank Smith, Jr., then-Councilmember for Ward 1, and Hilda Howland M. Mason, then-Councilmember at Large, similarly opposed the application.

The Board received written and oral comments in opposition to the application from 22 residents of Columbia Heights, as well as a petition signed by 79 residents. In general, the residents were concerned about the number of community-based residential facilities and similar facilities in the neighborhood; the proximity of the proposed youth rehabilitation home to an elementary school; and the appropriateness of the location, given drug trafficking, prostitution, and other criminal activity in the neighborhood. They feared that the proposed facility might attract other youthful offenders, and that the residents of the facility might be recruited by drug dealers and criminals operating in the area. They stated that the facility would add to fear and insecurity in the area, and drive away families and law-abiding residents.

Closing of the Record. At the conclusion of the public hearing, the Board left the record open for additional information, including information from the Zoning Administrator on the existence of community-based residential facilities within the same square or within 500 feet of

the subject property; a site plan from the applicants; and information from the community relating to the number of community-based residential facilities in the neighborhood.

Decision Meeting. At its April 6, 1994, public meeting, the Board deferred making a decision on the application until April 20, 1994, in order to provide the parties an opportunity to respond to the Zoning Administrator's memorandum regarding existing community-based residential facilities. After reviewing the responses from the applicants and the ANC 1A-10 Single-Member District Commissioner at its April 20, 1994, special public meeting, the Board voted to deny the application.

After the decision meeting, the Board inadvertently failed to issue a written decision and order on the case. As the members of the Board who are to render the final written decision and order did not personally hear the evidence, the Board issued a Proposed Decision and Order, affording the parties the opportunity, pursuant to the District of Columbia Administrative Procedure Act, D.C. Code § 2-509(d) (2001), to submit written exceptions and arguments to the Board. No exceptions and arguments were received. On December 4, 2001, the Board voted 4 – 0 – 1, with the third mayoral appointee not present, not voting, to issue the final Decision and Order..

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 597 Columbia Road, N.W. (Square 3051, Lot 813), on the north side of Columbia Road, N.W., between Warder Street and Georgia Avenue.
2. The lot is 3,108 square feet in size. It is improved with a two-story plus basement, semi-detached one-family dwelling. The building shares a common wall with the dwelling to the east. There is a wide side yard to the west.
3. The basement contains a small rear office, full bath, recreation room, and furnace room. The first floor contains a large living room, dining room, and kitchen with laundry facilities. The second floor contains three large bedrooms and a full bath.
4. A five-foot wide public space walkway leading to Columbia Road abuts the property on the west side, while a 20-foot wide public alley abuts the property to the rear.
5. A parking area is located at the rear of the site with direct access to the rear alley. It could accommodate eight vehicles with stacked parking.
6. The property is zoned R-4. The R-4 District permits matter-of-right development of residential uses. A youth residential care home for up to eight persons is permitted as a matter of right. *See* 11 DCMR §§ 300.3(d), 320.3(a), 330.5(a) (1995). A youth rehabilitation home is permitted if approved by the Board pursuant to 11 DCMR § 335 as a special exception.

7. On September 12, 1989, the Department of Consumer and Regulatory Affairs issued Mark D. Douglas a certificate of occupancy to use the basement, first, and second floors as a youth residential care home, with eight residents and two staff. The property, however, has never been used as a youth residential care home.

8. The building was vacant at the time the application was made.

9. The surrounding area is residential in character.

The Proposed Youth Rehabilitation Home Use

10. The applicants propose to use the property as a youth rehabilitation home for eight youths, both male and female, alleged or adjudicated delinquents ages 14 to 18 years old who are committed to the care of the Department of Human Services. A rotating staff of 22 would serve the facility.

11. The home would be operated 24 hours a day, seven days a week. There would be five staff on duty from 8:00 a.m. to 4:00 p.m., four staff from 4:00 p.m. to midnight, and four staff from midnight to 8:00 a.m.

12. The eight youths residing at the facility would be referred by the Department of Human Services under contract with the applicants. The average length of stay would be between 45 and 60 days. Under exceptional circumstances, a youth might reside in the home for as long as one and one-half years.

13. Staff members would include a facility manager, social worker, teacher, cook, several counselors, and maintenance personnel. Milton C. Douglas, Jr., would serve as the director of the facility.

14. The applicants would provide the residents with basic education and group or individual counseling. Those youth not restricted to the proposed facility would attend a public school. Vocational development training would be provided through existing youth employment centers.

15. The security system would include window bars, door monitoring systems, motion detector lights, and property fencing. The youth would be supervised at all times, both within and outside of the facility.

16. According to the applicants, there would be a maximum of two visitors to the facility on a daily basis. The majority would visit the home on weekdays. The evidence, however, indicated that there would be more than two visitors per day, including family members, social workers, law enforcement and court personnel, and attorneys.

17. When permitted by the court, the residents would be allowed to go home on weekends. The facility would provide van transportation when necessary.

18. Staff and visitors would park at the rear of the property. There is also restricted (two-hour) on-street parking along Columbia Road, N.W., directly in front of the property. The youths served by the facility would not be allowed to have vehicles.

19. The facility's recreational activities would include an occasional backyard cookout along with off-site activities at nearby recreation centers and out-of-town trips.

20. The applicants also proposed establishing a community advisory board.

Special Requirements of 11 DCMR § 335

21. There is no other property containing a community-based residential facility for seven or more persons in the same square or within a radius of 500 feet from any portion of the subject property.

22. There are 43 existing community-based residential facilities within ten blocks of the subject property. Ex. 64.

23. At the time of the hearing, Ward 1 had one third (4 out of 12) of all the adult rehabilitation homes in the District, almost half (9 out of 21) of the youth rehabilitation homes, and one quarter (two out of nine) of the substance abusers' homes. At the ANC level, ANCs 1A and 1B had three-quarters of the Ward's adult rehabilitation homes, more than one-half of the Ward's youth rehabilitation homes, and both of the Ward's substance abusers' homes.

24. According to the supplemental statement provided by the Columbia Road Neighbors (Ex. 65), there are six youth rehabilitation homes within a ten-block radius of the property: 3518 – 13th Street; 1238 Harvard Street, 1444 Harvard Street, 1300 Kenyon Street, 3601 – 14th Street, and 1320 Harvard Street. In addition there are two substance abusers' homes, one at 3601 – 14th Street and the other at 1320 Harvard Street.

25. The cumulative impact of the proposed youth rehabilitation home has the potential to destabilize the neighborhood by making it less attractive for family life and law-abiding citizens. Neighborhood residents testified that they feared for their safety due to crime and drug trafficking in the area. They worried that the youth who would reside in the proposed facility might attract other youth offenders to the neighborhood, and that they might be recruited by drug dealers and criminals operating in the area. They were concerned for the safety their young children, travelling to and from school and playing outdoors. The neighbors stated that the addition of yet another youth rehabilitation home would make them feel unsafe and less likely to use their streets, yards, and front porches, with the result that their neighborhood would become even more unsafe.

26. The Board finds that given the number of existing youth rehabilitation homes within a ten-block radius of the proposed facility, the proposed facility would adversely impact the neighborhood.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicants are seeking a special exception pursuant to 11 DCMR § 3104.1 to use the subject property as a youth rehabilitation home in accordance with § 335. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met; and the Office of Zoning and OP have provided notice of the application to all relevant District departments and agencies as required by § 335.9.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zone district, provided the specific regulatory requirements for the requested special exception are met. The Board's discretion in reviewing an application for a youth rehabilitation home is thus limited to a determination of whether the applicant meets the requirements of 11 DCMR §§ 335 and 3104.1. If the applicant meets the burden of proof, the Board must ordinarily grant the application. See *Gladden v. District of Columbia Bd. of Zoning Adjustment*, 659 A. 249, 255 (D.C. 1995).

In reviewing an application, the Board is required under D.C. Code § 6-623.04 (2001) to give "great weight" to OP recommendations. The Board carefully considered OP's report; however, as explained in this decision, the Board does not find OP's recommendation to grant the application persuasive as OP did not analyze whether the proposed youth rehabilitation home would have an adverse impact on the neighborhood due to the number of similar facilities in the area, as required by 11 DCMR § 335.6, apart from the same square or within 500 feet of the proposed facility.

The Board is also required by D.C. Code § 1-309.10(d) (2001) to give an affected ANC's recommendations "great weight." ANC 1A, the ANC for the area within which the property is located, did not make a recommendation in this case. The Board is therefore unaware of any specific issues or concerns that ANC 1A may have had with respect to this application and unable to afford ANC 1A the great weight to which it is entitled. ANC 1B, the ANC for the area located immediately across the street from the proposed facility, is also an "affected ANC." See *Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793, 797-98 (D.C. 1994). ANC 1B opposed the special exception, but did not identify its issues and concerns in its written report.

The Zoning Regulations treat youth rehabilitation homes, adult rehabilitation homes, and substance abusers' homes as residential in character, but with the potential to have a greater adverse impact on residential districts than other community-based residential facilities. Thus, under 11 DCMR § 335.6, a proposed youth rehabilitation home may "not have an adverse impact on the neighborhood because of . . . the number of similar facilities in the area." As recognized in *Gladden*, 659 A.2d at 255, the addition of a proposed youth rehabilitation home given the number of similar facilities already existing in the area may, in and of itself, have an adverse impact on a neighborhood. With respect to this application, there are six youth rehabilitation homes within a ten-block radius of the property. The Board concludes that it is appropriate to

consider the area within a ten-block radius of the proposed youth rehabilitation home for purposes of applying § 335.6 in this case, and that the six existing youth rehabilitation homes within this area qualify as "similar facilities."

Based on Findings of Fact Nos. 25 and 26, the Board concludes that the proposed youth rehabilitation home would have an adverse impact on the neighborhood due to the number of existing similar facilities in the area. As recognized in 11 DCMR § 330.2, the "primary purpose [of the R-4 District] shall be the stabilization of remaining one-family dwellings." The addition of the proposed youth rehabilitation home to an area that already has six existing youth rehabilitation homes would make the neighborhood less attractive and suitable for families and law-abiding residents, contributing to its destabilization.

The Board concludes therefore that the applicants have failed to meet their burden of proof by demonstrating that the proposed youth rehabilitation home meets the requirements of 11 DCMR § 335.6. It is hereby **ORDERED** that the application is **DENIED**.

Vote taken April 20, 1994, on the merits of the application:

VOTE: 3 - 0 - 1 (Craig Ellis, Laura M. Richards, and George Evans, to deny; Angel F. Clarens, abstaining).

Vote taken November 6, 2001, to issue the Proposed Decision and Order:

VOTE: 4 - 0 - 1 (Geoffrey H. Griffis, Carol J. Mitten, Anne M. Renshaw, and David W. Levy, to issue the Proposed Decision and Order; the third mayoral appointee not present, not voting).

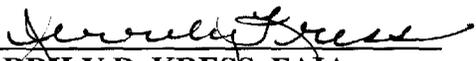
Vote taken December 4, 2001, to issue the final Decision and Order:

VOTE: 4 - 0 - 1 (Geoffrey H. Griffis, Carol J. Mitten, Anne M. Renshaw, and David W. Levy, to issue the final Decision and Order; the third mayoral appointee not present, not voting).

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 13 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME EFFECTIVE UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR

§ 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15901

As Director of the Office of Zoning, I hereby certify and attest that on DEC 13 2001, a copy of the foregoing Decision and Order in BZA Application No. 15901 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

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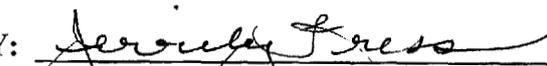
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ATTESTED BY:


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Director