

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15909 of the Western Presbyterian Church, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph F. Bottner, Zoning Administrator made on September 3, 1993, to the effect that a variance must be obtained to provide food for the homeless on that portion of the premises located in the SP-2 District for a church in R-5-D and SP-2 Districts at premises 2401 Virginia Avenue, N.W. (Square 31, Lot 28).

HEARING DATES: January 19 and February 2, 1994
DECISION DATE: March 2, 1994

SUMMARY OF EVIDENCE:

1. The property which is the subject of this appeal is located on the north side of Virginia Avenue between 24th and 25th Streets and is known as premises 2401 Virginia Avenue, N.W. The lot is located in the R-5-D and SP-2 zone districts.

2. The appellant is currently constructing a new church building on the subject site pursuant to Building Permit No. B-372735 issued April 16, 1992.

3. Other than a small area to the east of the premises zoned SP-2, the surrounding area is zoned R-5-C and R-5-D. To the north of the site are apartment buildings, single family townhouses and the George Washington University community. To the south and west of the site is the Watergate complex, Columbia Plaza, the Kennedy Center and the former Howard Johnson's Hotel in areas zoned SP-2, R-5-B and a small portion of land on top of the Whitehurst Freeway zoned C-2.

4. The church building currently under construction contains approximately 42,611 square feet and that includes a new sanctuary, administration offices, classrooms, and underground parking. The plans approved by Building Permit No. B-372735 included a hall and kitchen on the basement level within the SP-2 zoned portion of the lot.

5. Western Presbyterian Church has been located at 1906 H Street, N.W. since the 1930s and has been located in the Foggy Bottom area since the 1850s. The Church has sold the property and proposes to relocate its current operations to the subject site in March of 1994.

6. Testimony presented by Western Presbyterian Church indicated that the church operates Miriam's Kitchen, which provides breakfast to approximately 150-200 homeless people Monday through

Friday from 7:15 a.m. to 8:15 a.m. The Church wishes to continue its ministry when it moves to the subject premises, which move is scheduled for early March, 1994. During the time of operation of Miriam's Kitchen at 1906 H Street, N.W., the area was zoned residential and the Church was operating under a valid certificate of occupancy for a church. At the time Miriam's Kitchen began operations at 1906 H Street, N.W., the zoning authorities were made aware of its operation. No special permit was ever required of the Church to operate Miriam's Kitchen at 1906 H Street, N.W.

7. By letter dated September 3, 1993, Joseph F. Bottner, Jr., the Zoning Administrator, advised the church that it must seek a variance from the use provisions to operate its feeding program in the SP-2 District or a special exception to operate in the R-5-D District. The portion of the premises where the feeding program is proposed is located in the SP-2 District.

8. On October 15, 1993, counsel for the Church filed the instant appeal. The appellant contends the Zoning Administrator erred in not determining the feeding program is an accessory use customarily incidental and subordinate to the principal use as a church. In addition, appellant contends that the Zoning Administrator erred in impermissibly restricting the free exercise of religion pursuant to the First and Fourteenth Amendments to the Constitution of the United States of America.

9. A church is a matter of right use in an SP-2 zone district in accordance with 11 DCMR 501 and 201. Pursuant to 11 DCMR 502.7, any other accessory use is also a matter of right use. An accessory use is defined in 11 DCMR 199 as "a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use." Pursuant to Section 199.2(g) of the Zoning Regulations, words not defined in Section 199 "shall have the meanings given in Webster's Unabridged Dictionary." The term "church program is not specifically defined in the Zoning Regulations.

10. Section 216 of the Zoning Regulations provides for special exception approval in residential districts of a church program "conducted by a church congregation or group of churches" if the program is (a) organized exclusively for the promotion of the social welfare of the community and not for profit; (b) is carried on within the existing church building or structure; (c) is conducted by a staff composed of persons, at least 75 percent of which, volunteer their time and services; (d) is not likely to become objectionable to the residential district; and (e) does not utilize signs or displays indicating the location of the program on the outside of the building. Special exception approval is limited to three-year periods but may be renewed.

11. Section 500.5 of the Zoning Regulations provide that "[e]xcept as provided in Chapters 20 through 25 of this title, in the SP district, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for one (1) or more of the uses listed in this chapter." The specified uses permitted as special exception under Section 505.1 in the SP District does not include "churchs programs."

12. The factors relied upon by this Board in determining what constitutes an accessory use were cited by the Court in Citizens Coalition v. Board of Zoning Adj., 619 A.2D 940 (D.C. App. 1993). They are as follows:

- a. The use (a cogeneration facility) furthered the academic mission of the university.
- b. The use was customarily incidental and subordinate to the principal use.
- c. The use was located on the same lot with the principal use.
- d. The use would not have substantial adverse impacts on the surrounding neighborhood.

13. The appellant argued that, feeding the needy is an integral part of the Church's mission to minister to the poor as defined by the Bible, the constitution of the Presbyterian Church (USA) which governs the Church, and the Church's own bylaws. The constitution of the Presbysterian Church (USA) instructs the congregations to "minister to the needs of the poor, the sick, the lonely, and the powerless, engage in the struggle to free people from ... hunger" The appellant presented testimony regarding the Presbyterian Church's ministry to the hungry. The National Capital Presbytery consists of approximately 120 churches in the greater Washington area. There are approximately 40,000 members. Feeding the hungry is a priority within the National Capital Presbytery. The Stated Clerk of the Presbyterian Church (USA), submitted a letter which stated that member congregations are expected to minister to the needy and hungry. Referring to this letter, the appellant stated that the National Capital Presbytery works with congregations in the Washington, D.C. area to help them form alliances so that a hunger ministry can be carried out in particular areas.

14. The appellant testified that the bylaws of the Church state its purpose as being "primarily but not limited to, promoting a spirit of Christian influence within the fellowship of the congregation and upon the community; to provide religious education by ... ministering to all who are in need" In addition to

liturgical worship and religious education, the Church's purpose includes worship through "mission". In the early 1980s when the number of homeless in the District of Columbia had begun to increase dramatically, the Church, in furtherance of the mission of the Presbyterian Church (USA), began feeding the homeless by passing out bag lunches at its courtyard door.

15. The appellant testified that, as the number of homeless grew, the congregation of the Church decided that its feeding of the homeless needed to be more structured, and in collaboration with the religious community in Foggy Bottom began serving breakfast to the homeless in its basement. Miriam's Kitchen was operated by a Board of Directors. Members and officers of the Board of Directors as well as the director of Miriam's Kitchen began a separate nonprofit organization, Miriam's Kitchen, Inc. In 1993, the Church took over full responsibility from Miriam's Kitchen, Inc. for feeding the homeless at the Church. The feeding ministry, which is still called Miriam's Kitchen, is carried out by an operations committee of persons responsible to the Church's Board of Deacons who are in turn responsible to the Church's governing body, its Session.

16. The appellant presented evidence of the history of Christian churches providing sanctuary to those in need. The appellant testified that institutional benevolence to the poor, the sick, orphans, widows and other helpless [people] has been characteristic of the Christian Church from its beginning. It involved organized assistance, supported by the contributions of the entire community and rendered by dedicated persons. The church in this way fulfilled the duty of "the seven corporal works of mercy" mentioned in the Gospel According to Matthew and carried on the healing mission of Jesus.

17. The appellant presented testimony with regard to the traditional role of the church in providing food to the poor; the historical continuity of the Church's involvement in ministering to the poor and needy, especially as that ministry is related to feeding; and, that the ministry of service to the poor is part of the religious beliefs of the Church. The appellant testified that a church is both a place where worship takes place and a place of refuge.

18. The appellant presented testimony regarding feeding programs for the disadvantaged by Churches in the District of Columbia. The Council of Churches of Greater Washington has a membership of 550 local churches made up of fourteen major denominations. Its food ministry has four components. First, as the largest food distribution organization in Metropolitan Washington, D.C., the Council of Churches, through 35 churches throughout the District of Columbia, distributes food to 7000 families per month. Second, hot meals are served to 4,000-5,000

homeless people five days a week through 29 churches in the District of Columbia. Third, 25 churches throughout the District of Columbia provide on-sight Thanksgiving dinners throughout the Thanksgiving week. Fourth, through the Neediest Kids food drive, food is delivered to families at Christmas and New Year's Eve. A 1990 survey of all the congregations of the National Capital Presbytery regarding their feeding ministries indicated that out of the 120 member churches, 60 responded, and out of those 60, 93 percent stated they had some type of feeding ministry in their church. The appellant included in its appeal an Emergency Food and Shelter Directory published in the Fall of 1993 by the Interfaith Conference of Metropolitan Washington, which lists over 101 organizations which provide food assistance to the needy in Metropolitan Washington, the vast majority of which are religious-based or have religious participation.

19. The appellant argued that the concept of a church goes beyond religious services and includes many traditional, historic uses such as educational activities, mission activities such as shelter, feeding, counseling, and community groups such as Boy Scouts and Alcoholics Anonymous. Anderson, in his treatise on American Law of Zoning, cites Community Synagogue v. Bates, 154 N.Y.S.2d 15, 136 N.E.2d 488 (1956) for this proposition:

"A church is more than merely an edifice affording people the opportunity to worship God. Strictly religious uses and activities are more than prayer and sacrifice and all churches recognize that the area of their responsibility is broader than leading the congregation in prayer"

20. The appellant stated that courts have held that a wide variety of activities are accessory uses consistent with a church. In addition, the Zoning Administrator introduced an opinion of the Corporation Counsel of the District of Columbia indicating that, in 1966, churches were given wide latitude for accessory uses, including mortuaries, parochial schools, parking lots, playgrounds, convents, monasteries, gymnasiums, swimming pools, meeting rooms and auditoriums.

21. The appellant argued that the proposed feeding program, in addition to furthering the church's religious mission, meets the general criteria used to identify an "accessory use", as follows:

- a. To be an accessory use, the use must be located on the same lot with the principal use. The homeless will be fed in the basement of the Church.
- b. Feeding of the homeless by the Church is customarily incidental to and does not threaten the dominant use of the property as a church. The kitchen is located only in

a portion of the basement of the church and comprises about 2.5 percent of the total square footage of the church. The kitchen is in operation less than nine hours per week. The remainder of the church is available during this limited period for other uses, including worship services and other church programs. The portion of the basement where the homeless will be fed will be used for other church activities including Sunday worship and Christian education on weekends and during weekdays after the homeless have been fed. The Church's regularly scheduled hours of operation are from 9:00 a.m. to 3:00 p.m. Monday through Friday, 8:00 a.m. to 10:00 p.m. on Sunday, 5:00 p.m. to 10:00 p.m. on Tuesday, 4:00 p.m. to 9:00 p.m. on Wednesday, and 6:00 p.m. to 9:00 p.m. on Thursday. Thus, feeding the homeless represents only a small percentage of the normal hourly operations of the Church.

- c. The proposed feeding program will not have a substantial adverse impact upon the surrounding community. The neighborhood surrounding the Church contains a mix of uses. In addition to apartment buildings and single-family dwellings, the neighborhood contains a large number of retail, service, institutional and commercial establishments, including the George Washington University, the Watergate Hotel, the Watergate Office Buildings, the Kennedy Center, a Howard Johnson's Hotel, three other churches and the Saudi Arabian chancery. The flow of persons and traffic in and out of this area is high due to the mix of uses within the area.

22. The Zoning Administrator testified that the plans approved by Building Permit No. B-372735 authorizing the construction of the new church at the subject premises included a hall and kitchen in the basement. The Zoning Administrator was of the opinion that kitchen use within a church structure is not uncommon.

23. In August of 1993, the Zoning Administrator received letters from Advisory Neighborhood Commission (ANC) 2A and the Foggy Bottom Association requesting a stop work order at the subject premises because they had become aware of the proposed feeding program. Based on these complaints, the Zoning Administrator investigated the situation to determine if there were any violations of the provisions of the Zoning Regulations.

24. The Zoning Administrator, in response to the complaints received, carefully reviewed the proposal to establish a feeding program within the church structure. The Zoning Administrator was of the opinion that such a use would fall under the category of "church program."

25. The Zoning Administrator testified that the Zoning Regulations permit a "church program" as a special exception in the residential districts subject to the following criteria:

- 216.1 Use for a program conducted by a church congregation or group of churches shall be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.
- 216.2 The church program shall not be organized for profit, but shall be organized exclusively for the promotion of the social welfare of the community.
- 216.3 The part of the church program conducted on the property shall be carried on within the existing church building(s) or structure(s).
- 216.4 The staff conducting the program shall be composed of persons, at least seventy-five percent (75%) of whom volunteer their time and services.
- 216.5 The operation of the program shall be such that it is not likely to become objectionable in the Residence district because of noise and traffic.
- 216.6 No signs or display indicating the location of the church program shall be located on the outside of the building or the grounds.
- 216.7 Any authorization by the Board shall be limited to a period of three (3) years, but may be renewed at the discretion of the Board.

26. The Zoning Administrator noted that the portion of the church which would house the feeding program is located within the SP-2 zoned portion of the lot. The Zoning Administrator testified that the Zoning Regulations do not authorize the establishment of a "church program" as a special exception or as a matter of right in the SP District.

27. Based on this review, the Zoning Administrator issued a letter to the appellant, dated September 3, 1993, indicating that the proposed feeding program would require special exception relief in the R-5-D District and a variance from the use provisions in the SP-2 District.

28. The Zoning Administrator testified that the provisions of 11 DCMR 216 relative to the establishment of "church programs" were adopted by the Zoning Commission in Zoning Commission Case No. 69-

40 to provide a legal framework within which the social welfare activities undertaken by a church could be expanded in residential districts.

29. The Zoning Administrator noted that the impetus for the adoption of Section 216 arose from a Board of Zoning Adjustment decision, in Appeal No. 10172 sustaining a decision of the Zoning Administrator that the Zoning Regulations did not permit a church to allow its property to be used for the provision of a food program by Meals on Wheels, an organization which delivers food at a reasonable cost to shut-ins in their homes.

30. In BZA No. 10172, the Board upheld the Zoning Administrator's determination that the activity proposed, although not profit-making, more closely resembled a business such as a catering establishment than an adjunct of the church because the use was not limited to periods of relatively short duration and was not solely for the benefit of its parishioners and employees. The Zoning Administrator's opinion was based in part, on a memorandum from Corporation Counsel to the Commissioners of the District of Columbia rendering an opinion with respect to the sale of Christmas trees by churches without securing a Certificate of Occupancy for such activity.

31. The Zoning Administrator testified that the memorandum from Corporation Counsel dated December 15, 1966 indicated that a church with a valid certificate of occupancy is not required to obtain a separate certificate of occupancy for the sale of Christmas trees as an accessory fundraising activity of the church so long as such uses are limited to periods of relatively short duration and the proceeds of the activity are for the benefit of the church.

32. The Zoning Administrator testified that his decision that special exception or variance relief was required as set forth in his letter of September 3, 1993 was not based on any consideration by him as to whether or not the proposed feeding program would qualify as an "accessory use". However, based on the testimony at the time of the public hearing, he was of the opinion that such program was not a use which is incidental or subordinate to the principal use of the premises as a church.

33. The Zoning Administrator was of the opinion that the operation of the proposed feeding program most closely resembles that of a restaurant, even though there is no charge for meals, based on the number of meals served, the period of time for which the program is expected to remain in operation, and the fact that it would not be solely for the benefit of members of the church. A restaurant is not permitted in an R or an SP District.

34. The Zoning Administrator noted that if the proposed feeding program was considered to be an "accessory use" to a church, it would be permitted as a matter of right in any zoning district and would not be subject to any zoning controls with respect to controlling any potential adverse impacts on adjoining or nearby residential properties.

35. The Zoning Administrator noted that where the establishment of a use is specifically governed by the Zoning Regulations in a particular district, the Zoning Commission has in fact made a determination that that use cannot be considered as an accessory use. For example, a parochial school is generally considered to be an "accessory use" to a church. However, because it is specifically permitted with special exception relief in the R districts, the church would not be exempt from meeting the requirements for approval of such use as set forth in the Zoning Regulations.

36. In further support of his position, the Zoning Administrator noted that a "rescue mission", which is defined as "a city mission established to help persons especially of low income who are unable to help themselves and are in desperate need of moral and spiritual rehabilitation", is specifically prohibited in residential districts.

37. By letter dated January 14, 1994 and by testimony at the public hearing, ANC 2A unanimously opposed the granting of the subject appeal. The ANC's issues and concerns are summarized as follows:

- a. An on-site homeless feeding program is not an accessory use but an activity which requires a special exception and/or use variance to be carried out at 2401 Virginia Avenue, N.W., especially considering its extremely adverse impacts on the abutting and surrounding residential community;
- b. Adherence to the laws and regulations of the District of Columbia would not and does not violate the appellant's First or Fourteenth Amendment rights; and
- c. There would be substantial and deleterious environmental, economic, and social impacts on the Foggy Bottom-West End Community if such a special exception and/or use variance for 2401 Virginia Avenue, N.W. were granted.

38. The record contains numerous letters in support of the proposed feeding program. The support is generally summarized as follows:

- a. The appellant's outstanding record for operating the program in an efficient, compassionate and effective manner at its current location.
- b. The proposed feeding program is in keeping with the Christian mission of assisting those in need and should be considered a "customary" activity of a church.
- c. The District government should not impose "roadblocks" to the program since it has requested assistance from the private sector to help alleviate the impacts of homelessness on the city's population and resources.
- d. The government should not be able to dictate the manner in which the church seeks to carry out its mission of assisting the needy. Such government interference could set a dangerous precedent with respect to state control of religious practices.

39. As a preliminary matter, the Board granted intervenor status in opposition to the appeal to the Foggy Bottom Association, the Columbia Plaza Association, the Potomac Plaza Terraces, Incorporated, the Potomac Plaza Apartments Cooperative, Inc., and the West End Citizens Association. The Board denied intervenor status to Irene Parsons, who was permitted to testified as part of the presentation made by Advisory Neighborhood Commission 2A.

40. In addition to the issues and concerns raised by the ANC, the opposition to the appeal is summarized as follows:

- a. The subject site is inappropriate for the proposed feeding program because of its close proximity to residential uses.
- b. The subject site would not be convenient to the homeless persons served by the current feeding program who currently congregate in the downtown area.
- c. The proposed feeding program could be operated by the church at another location.
- d. The influx of clients of the feeding program into the subject neighborhood would adversely impact the health and safety of area residents, many of whom are elderly women.
- e. The appellant was made aware of the residents' position regarding the proposed feeding program during the 1992 public hearings on Zoning Commission Case No. 91-17M/79-13.

- f. A limited survey of the churches represented by the appellant as providing feeding programs indicated that (1) few operated on a daily basis; (2) some programs did not involve any feeding on-site but were either off-site or involved donating food to other entities; and, (3) some of the programs are not located in residential neighborhoods. The opposition testified that several churches on the list have received special exception approval pursuant to Section 216 or pursuant to Section 334 for operation as a temporary community service center.
- g. The adverse impacts of the proposed feeding program on neighborhood safety, security and property values would not be allayed by the church's proposed regulations controlling the program since they do nothing to control loitering once individuals have left the site. Additionally, there are no other comparable uses, permitted as a matter of right, which have such a daily intensity of use as that proposed.
- h. The feeding programs affiliated with a church listed in the Combined Federal Campaign, except Miriam's Kitchen, have either obtained an appropriate certificate of occupancy to do so; are located in a commercial district; or have been cited by the District of Columbia for not obtaining a valid certificate of occupancy.
- i. The Foggy Bottom/West End Area already has its share of homeless feeding programs.
- j. The Mayor's Task Force on the Homeless has recommended that any programs to serve the homeless must first meet all zoning and other regulatory standards, including special exception or variance relief where necessary.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The proposed feeding program cannot be considered as an "accessory use" to the church as defined by the Zoning Regulations. Although the proposed use is located on the same lot as the church and may further the church's mission of tending to the needy, the proposed program exceeds the limits of a use considered "customarily incidental to and subordinate to" the principal use as a church.

2. The proposed feeding program has the same general characteristics as the Meals On Wheels program which was the subject of Board of Zoning Adjustment Appeal No. 10172. Both

programs involve a nonprofit operation providing meals to the needy; both programs operate on a daily, year round basis; both have commercial operational characteristics similar to a catering or restaurant business although operating within a church structure; and the benefits and proceeds of both programs are not of direct benefit to the church or its congregation. The Board finds that both programs would properly be considered as "church programs" based, in part, on the fact that Section 216 was adopted by the Zoning Commission as a direct result of the facts related to BZA Appeal No. 10172. The Board further finds that because a "church program" is specifically governed as a special exception in the Residential District, the Zoning Commission has determined that it is not to be considered as a matter of right accessory use to a church.

3. Although churches are permitted as a matter of right in all zone districts, the text amendment adopted in Zoning Commission Case No. 69-40, which allows special exception approval of church programs, applies specifically to the residential district and does not include any text specifically permitting such use as a matter of right or as a special exception in any other zone district.

4. As currently written, a "church program" is specifically permitted as a special exception in the R districts only. Sections 618.1 and 915.1 permit "other uses not specified. . . . or prohibited" in the CR and W districts, respectively, with special exception approval by the Board. Section 821.3 allows "any other lawful use" not regulated as a special exception or prohibited in the M District to be established as a matter of right in the M District. Other than specifically cited, the Board finds that the operation of a church feeding program, as proposed, requires special exception relief in the R, CR and W districts. The church feeding program would be permitted as a matter of right in the M District. In all other districts, the church must seek variance relief in order to establish a church program. If the church program proposed fits the characteristics of a use permitted as a matter of right in the controlling district, such as a restaurant or catering establishment in the C-2 District, the church must obtain a certificate of occupancy for that use, as well as a certificate of occupancy for the church use.

5. The Board finds that the proposed church program is not permitted as a matter of right nor as a special exception at the subject site because that portion of the premises proposed to house the program is located within the SP-2 District. The fact that the program existed at its current location in a residentially-zoned church structure for a number of years without special exception approval or a certificate of occupancy specifically allowing the operation of the feeding program does not invoke any special privilege or situation which would justify the adjustment of the Zoning Regulations as they pertain to the subject site.

6. The Board finds that its consideration in the instant case is limited to whether the Zoning Administrator properly interpreted the Zoning Regulations as they apply to the proposed church feeding program. Therefore, it is not necessary for the Board to address the criteria for special exception relief as set forth in Section 216 nor to determine whether the church can sustain the burden of proof necessary to justify the granting of variance relief.

7. The Board finds that it is beyond its authority to determine whether the Zoning Regulations should allow for the proposed program as a matter of right or as a special exception where such relief is not specifically spelled out in the text of the Regulations. The Board finds that it is within the purview of the Zoning Administrator to determine whether a church program would qualify as a use permitted as a matter of right or as a special exception in the controlling zone district based on its operating characteristics and the text of the Zoning Regulations. The Board further finds that it is the responsibility of the Zoning Commission to determine whether the text of the Zoning Regulations adequately addresses the location and criteria for church programs or if, based on its review, an amendment to the text of the Zoning Regulations as currently written is warranted.

8. The Board finds that its authority in considering the subject appeal is limited to ensuring that the Zoning Regulations, as written, are properly interpreted and enforced. The Board does not believe that its consideration in this case in any way impacts the church's ability to pursue its religious beliefs. The Board finds that the existing zoning ordinance aims to control the conduct of specific uses which may be of a more intense nature than that of a use normally permitted as a matter of right. The general application of the zoning ordinance to the proposed use is secular in nature and is intended to preserve the government's ability to regulate land use and activities to mitigate any potential impacts on neighboring properties.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the appellant is appealing the decision of the Zoning Administrator to the effect that its proposed church feeding program for the homeless would require special exception approval in the Residential District and a variance from the use provisions in the Special Purpose District. The Board concludes that the Zoning Administrator's decision with respect to the establishment of a church feeding program for the homeless is based on the correct interpretation of the Zoning Regulations as currently written and, therefore, must be upheld.

As stated in Findings of Fact Nos. 1 and 2, the proposed church feeding program cannot be considered as a matter of right accessory use to the church as defined by the Zoning Regulations. As stated in Finding of Fact Nos. 3 and 4, the establishment of a church program in any zone district, except the M District, requires obtaining a certificate of occupancy through appropriate special exception or variance relief or by obtaining a certificate of occupancy for a use permitted in the controlling zone district which would allow the proposed program to be established as a matter of right.

The Board concludes that its consideration in the instant case is limited to issues relevant to the Zoning Administrator's decision with respect to the proposed church program. The Board, therefore, must decline to consider the evidence presented with respect to whether the proposed use complies with the special exception criteria set forth in Section 216 or the burden of proof necessary to justify the granting of variance relief with respect to the potential impacts of the program on the community. The Board concludes that it has afforded the ANC the "great weight" to which it is entitled.

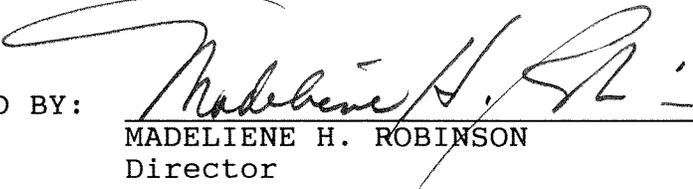
The Board further concludes that its consideration in the instant case is limited to the application of the Zoning Regulations, as written, and, as set forth in Finding of Fact No. 8, does not infringe on the Church's Constitutional rights with respect to its exercise of freedom of religion.

Based on the foregoing, the Board **ORDERS** that the decision of the Zoning Administrator is **UPHELD** and the appeal is hereby **DENIED**.

VOTE: 4-0 (Angel F. Clarens, George Evans, Laura M. Richards and Maybelle Taylor Bennett to deny; Craig Ellis not voting, not having heard the case).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: APR 21 1994

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

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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, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15909Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15909

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 21 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: APR 21 1994