

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16207 of Joseph's House acting for Miriam's House, pursuant to 11 DCMR 3108.1, for a special exception under Section 358 to increase an existing community residence facility from 15 to 20 persons in an R-5-B District at premises 1300 Florida Avenue, N.W. (Square 234, Lot 822).

HEARING DATE: February 19, 1997
DECISION DATE: April 9, May 7 and June 18, 1997

ORDER

SUMMARY OF EVIDENCE OF RECORD

The property which is the subject of this application is located at the southwest corner of 13th Street and Florida Avenue and is known as 1300 Florida Avenue, N.W. The subject lot, 822, is an irregularly-shaped corner lot that contains 6,599 square feet of land.

The lot is improved with a two-story, plus basement brick apartment building built in 1925. The building occupies 95 percent of the lot and contains a gross floor area of approximately 12,000 square feet. A 10-foot wide public alley abuts the site to the west.

The property is currently used as a community-based residential facility, known as "Miriam's House", which provides a home and living assistance for women with AIDS and their children. No more than 15 persons reside at the site. Pursuant to Subsection 350.4 (f) of the Zoning Regulations a community residence of up to 15 persons is allowed as a matter-of-right.

In this application, the applicant is seeking a special exception to increase the number of residents from 15 to a maximum of 20 under Section 358. The applicant maintains that the provisions of Section 358 and Subsection 3108.1 are met.

Subsections 358.2 and 358.3 – No Other CBRFs:

Under Subsection 358.2, there shall be no other property containing a community-based residential facility for five or more persons in the same square. Subsection 358.3 states that there shall be no other property containing a community-based residential facility for five or more persons within a radius of five hundred feet (500') from any portion of the subject property.

The applicant testified that there are no other CBRFs for five or more persons in the same square or within a 500-foot radius of the site.

The Office of Planning (OP) filed a report in support of the application dated February 11, 1997. OP stated that it is not aware of any CBRFs for five or more persons in Square 234. Nor is it aware of any CBRFs within 500 feet of the site. OP stated that the CBRF closest to the site is located at 1301 Clifton Street, N.W., approximately 750 feet away.

Dorothy Brizill, president of the Columbia Heights Neighborhood Association (CHNA) testified in opposition to the application on behalf of the association. She stated that there are several CBRFs within 500 feet of the subject property. She introduced into evidence, the documents to demonstrate that the applicant had not met this provision of the Regulations. One document entitled "Community- Based Residential Facilities Database" was published by the Office of Community-Based Residential Facilities. It was dated April 1996 and two facilities on the list were checked off – one was the subject property, the other was 1301 Clifton Street, N.W.

In rebuttal to this document, the applicant pointed out in the proposed order that the 1301 Clifton Street property was located 750 feet from the site according to the Office of Planning.

The second document was entitled "Public and Private Homeless Services in the District of Columbia (as of 12/31/96)". On this document, there were checkmarks next to three entries. First was Martha's Table at 2114 14th Street, N.W., described as a Drop-in Center. The second was Community of Hope at 1417 Belmont Street, N.W. described as an Emergency Family Shelter. The third was Belmont Recovery Group at 1437 Belmont Street, N.W. described as Transitional Rehabilitative Housing.

In response to this submission the applicant pointed out that none of the facilities listed were denominated as CBRFs. The applicant stated that the absence of the above three facilities from the list published by the Office of Community-Based Residential Facilities would suggest that they are not CBRFs.

Subsection 358.4 – Parking:

Subsection 358.4 states that there shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility. The applicant stated that no parking can be provided at the site. In a post-hearing submission dated February 5, 1997, addressing the issue of parking, the applicant stated that they did not believe that subsection 2101.1 of the Zoning Regulations requires parking at this site because it was erected before May 12, 1958. The applicant noted subsection 2100.6 which states "When the intensity of use of a building or structure existing before May 12, 1958, is increased by an addition or additions of employees, dwelling units, gross floor area, ... or other unit of measurement specified in Subsection 2101, parking spaces shall be provided for the addition or additions, subject to sections 2100.7 through 2100.9."

However, the applicant contends that under the current proposal the intensity of the use is not increased, as compared with the use in existence prior to 1958. Therefore, they argue, no additional parking should be required.

The applicant stated that in an R-5-B District, an apartment building is required to have one parking space for each two dwelling units. A CBRF, on the other hand requires two spaces for up to 15 residents and, where there are more than 15 residents, such number of spaces as may be determined by the BZA 11 DCMR Subsection 2101.1. The applicant stated that the original use of the building was a 17-unit apartment building. Under the current zoning law such a building would have to have nine parking spaces. With regard to a CBRF, one might assume that the two spaces required for the first 15 residents would logically be extended to two or four spaces if the residential numbers were increased to 20. Since four spaces are far less than nine, one can conclude that the use is considered to have been diminished, not intensified. Accordingly, no additional spaces should be required.

The applicant argued, even if the regulations were interpreted to require the applicant to consider parking, there are sound practical reasons for not requiring Miriam's House to provide it. First, the residents and their children are low-income women with AIDS and are unlikely to own automobiles. Second, only three staff members regularly bring cars to the site, and since Metro is so close, it is anticipated that most staff and visitors will arrive by Metro. Third, 13th Street and Florida Avenue, N.W. is largely a residential area from which many residents remove their cars during the work day. Finally, the applicant stated that they have not been informed by neighbors, visitors or staff that there is a dearth of parking spaces in the area.

Based on these arguments, the applicant requested that the Board conclude that no parking is required under the regulations. Alternatively, the applicant asked the Board to exercise its discretion to approve the special exception without requiring parking.

With regard to parking, the Office of Planning reaffirmed the position of the applicant and stated that, based on OP's discussion with the Zoning Administrator's office, parking is grandfathered into the property for all matter of right uses, in this case a CRF for up to 15 residents. Further, the applicant stated that only three staff members currently drive to the site. The Office of Planning estimates that of the total number of employees, volunteers and visitors who would visit the site weekly, approximately ten would drive.

The Office of Planning is of the opinion that off-street parking may not be required for this project for the following reasons:

- The women who would be residing at Miriam's House do not have access to automobiles; they are homeless.
- The site is easily accessible to Metrobus and Metrorail.
- Although on-street parking in the vicinity of the site is limited during the daytime, all-day parking is available in the neighborhood within walking distance of the site.
- Only staff and visitors need parking. The staff rotates throughout the day. All 12 employees and six volunteers would not be at the site at the same time.

In contrast to the views expressed by the applicant and OP, Ms. Brizill testified that there were insufficient parking spaces to serve the needs of residents, visitors, employees and social workers at Miriam's House. She made note of the many limitations on-street parking near the site. She stated that taxicabs regularly double-park to service individuals on the narrow street at the site. Because of these conditions, Mr. Brizill argued, the applicant should be required to provide parking.

Subsection 358.5 – Meeting Code Requirements:

The applicant maintained that all applicable code and licensing requirements would be met with the addition of residents. OP stated that the applicant would be required to obtain a new CRF license and Certificate of Occupancy if this application is approved.

Subsection 358.6 – Adverse Impacts:

Under Subsection 358.6 the facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

- A. Traffic. The witnesses in opposition to the application maintained that traffic will be adversely affected by the proposed facility. Mr. Clyde Howard stated that he noticed an appreciable increase in traffic when Miriam's House was first established there. He noted that the 1300 block of Florida Avenue is narrower than the 1200 block, making the street near the site dangerous. Both parties noted the lack of a pull-off area in front of the building where taxicabs often double-park to service the residents. This makes it difficult for cars to pass.

Ms. Brizill and Mr. Howard testified that traffic is heavy in the area because of the lack of on-site parking at other institutions such as Cardozo High School and Walker Memorial. Also contributing to this problem is the Metrorail construction that established detours on 14th Street.

Responding to the concerns about parking and traffic, the applicant testified that sometimes their delivery companies park in front of the site and other times they park in the alley.

With regard to the taxicab parking, the applicant stated that they were not aware of traffic being blocked on the street. The applicant noted, when an arriving taxi has stopped in front of the building or pulled into the alley at the side of the building, residents can see it through the glass front door in the foyer. Residents whose movements are not restricted by infirmity can settle into the taxi in 20 to 40 seconds and the traffic flow would not be unduly impeded. However, the applicant suggested that in situations where a resident's mobility is restricted, the resident would be assisted into the taxi by one of the staff or the taxi will be told in advance to wait in the alley. Since the alley is rarely used, except by trucks making deliveries to Miriam's House, this should not create an inconvenience to neighbors.

- B. Noise. Mr. Howard testified that his friend who lives adjacent to the site will not be pleased with the sound of children playing in the yard next door at the subject site.
- C. Operations. Ms. Brizill expressed a concern that there is insufficient play space for the children in the rear yard because the back fence is only five feet from the building.

In a post-hearing submission the applicant stated that the rear yard, which is on the south side of the building and runs the entire length of the building, measures 9 feet 10 inches wide. It is surrounded on three sides by a fence.

- D. Number of Similar Facilities in the Area. It is the applicant's position that there are no similar facilities in the area with which this facility would create an adverse impact.

Making reference to the other facilities in documents she presented to the Board, Ms. Brizill argued that this facility has created an adverse impact and will continue to do so because of the number of service providers, employees, deliveries, etc. that come to the facility. She stated that none of these facilities exist in isolation and together they impact the community adversely in terms of parking, traffic and the erosion of the residential character, even without the construction by Metro.

With regard to adverse impacts generally, OP stated that it is not aware of any adverse impacts that would be created as a result of minimally increasing the number of people living at Miriam's House. OP stated that upon its suggestion that landscaping would enhance the front of the premises, the applicant indicated that the University of Maryland has agreed to landscape the premises in March or April of this year. A trash dumpster is located at the rear of the premises and pick-up will occur two times a week. Medical waste is produced by the home. It is disposed of by a contractor, as needed, approximately once a week. Finally, OP noted that the building continues to look like an apartment house. It does not have any exterior signage that would bring unwanted attention to the premises.

Subsection 358.7 – Cumulative Effect Under Subsection 358.7:

The Board may approve more than one community-based residential facility in a square or within five hundred feet (500') only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.

The applicant's position is that there are no other CBRF's in Square 234 or within 500 feet of the site.

The opposing witnesses disagree with this assessment.

OP stated that it is not aware of any community-based residential facilities within Square 234 or within 500 feet of the site. Therefore, this subsection is not applicable to this application.

Subsection 358.8 – Approval for More Than 25 Persons:

This subsection authorizes approval of a facility for more than 25 persons. It is not applicable to the subject application.

Subsection 358.9 – Referrals to Other Agencies:

This subsection requires the Board to refer the application to other relevant D.C. Government departments and agencies. The only relevant referral would be to the Office of Planning. This referral was made.

Subsection 3108.1 – Harmony with the Zone Plan:

Under Section 3108.1, to grant a special exception, the proposed relief must be in harmony with the general purpose and intent of the zone plan.

The applicant maintains that the facility will be in harmony with the general purpose and intent of the zone plan.

Ms. Brizill argued that in the Comprehensive Plan, which sets forth the Ward One Objectives for Housing, the Zoning Commission shall consider changes to the Zoning Regulations so that there is a more even-handed treatment of CBRFs in Ward One. To allow this facility would be inconsistent with that objective. Responding to this argument, the applicant noted that the site is zoned residential under the Comprehensive Plan and the use is consistent with that zone.

Subsection 3108.1 – Impact on the Use of Neighboring Property:

The applicant testified that the increase in the number of residents from 15 to 20 is a modest one. They stated that the facility has been in operation for a year and they have not had any complaints from neighbors about the operation.

The applicant stated that parking has not been a problem because only three staff persons drive to the site. They park on the street in front of the building on Florida Avenue. They noted that four cars can park in front of the building. The applicant pointed out that many area residents generally take their cars during the day when the facility's employees come to work. Many of the people who will be coming to the site will take Metro and the facility's residents do not have cars, therefore they will not contribute to any parking demand near the site.

Advisory Neighborhood Commission 1B filed a report dated February 13, 1997 expressing support for the subject application. Cleopatra Scott, the Single Member District Commissioner for ANC 1B-11 testified that the vote in support was unanimous.

Ms. Brizill challenged the unanimous vote and the late filing by the ANC, which was due on February 12, 1997. The Board noted the request for a waiver from the ANC in its February 13, 1997 letter. By consensus the Board waived the rules to accept the report.

During the hearing on this application, no other parties testified either in support or opposition to this application.

FINDINGS OF FACT

Based on the record in the application, the Board finds as follows:

1. No other CBRFs are located within 500 feet of the site. The property at 1301 Clifton Street is a CBRF but it is about 750 feet away from the site.
2. In a post-hearing submission the facilities at the following addresses were identified as indicated:
1417 Belmont Street – an emergency family shelter
1437 Belmont Street – transitional rehabilitative housing
Other facilities – drop in centers for Martha’s Table.
3. The lack of a parking requirement is grandfathered at to this site.
4. The staff and others who frequent the site have not been shown to have trouble finding parking.
5. All day parking can be found near the site.
6. The applicant meets all code and licensing requirements.
7. The plan proposed by the applicant to assist residents into taxicabs will alleviate traffic congestion caused by these cabs at the site.
8. Limiting the number of the deliveries to two and having delivery trucks pull around the side will minimize the impact of delivery vehicles on the nearby area.
9. The opposition failed to link the alleged adverse impacts to the subject facility and other similar facilities.

CONCLUSIONS OF LAW AND OPINION

In the subject application, the applicant is seeking special exception relief to increase the number of residents in a community residence facility from 15 to 20 persons. The facility is located in an R-5-B District. Granting such a special exception requires a showing through substantial evidence that granting the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and that it will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The applicable provisions of Section 358 must also be met.

BZA APPLICATION NO. 16207
PAGE NO. 8

The Board concludes that based on the finds of fact, the applicant has met this burden of proof. The Board is of the opinion that the facility has operated for a year without substantial impacts on the neighborhood. The Board believes that the impacts that have been raised can be addressed by changes in the facility's operations, as directed by this order.

The Board believes that the applicant has met the provisions of Section 358 and that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map.

In light of the foregoing, the Board hereby **ORDERS** that the application be **GRANTED**, **SUBJECT** to the following **CONDITIONS**:

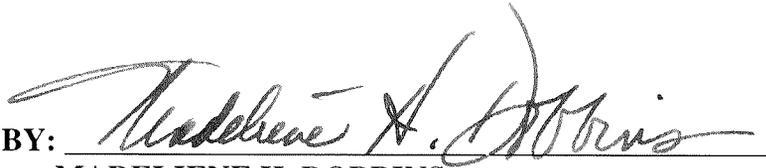
1. Approval shall be for a period of **FIVE YEARS**.
2. The maximum number of persons residing at the facility shall be 20, including women and children.
3. There shall be a maximum of 16 full time equivalent employees.
4. The front of the property shall be landscaped and kept free of trash and debris.
5. The applicant shall meet periodically with residents of the community to discuss any concerns that may be of interest to both groups.
6. Where a resident's mobility is restricted, the resident shall be assisted into the taxi by staff, or the taxi will be requested to wait in the alley.
7. Deliveries to the site shall take place from the alley or the rear of the building.

VOTE: 3-0 (Maybelle Taylor Bennett, Sheila Cross Reid and Angel F. Clarens to grant; Laura M. Richards opposed to the motion; Susan Morgan Hinton not present, not voting).

THIS ORDER WAS ISSUED AS A PROPOSED ORDER PURSUANT TO THE PROVISIONS OF D.C. CODE SECTION 1-1509(D). THE PROPOSED ORDER WAS SENT TO ALL PARTIES ON AUGUST 21, 1997. THE FILING DEADLINE FOR EXCEPTIONS AND ARGUMENTS WAS SEPTEMBER 26, 1997. NO PARTY TO THIS APPLICATION FILED EXCEPTIONS OR ARGUMENTS RELATING TO THE PROPOSED ORDER, THEREFORE, THE BOARD OF ZONING ADJUSTMENT ADOPTS AND ISSUES THIS ORDER AS ITS FINAL ORDER IN THIS CASE.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT - Susan Morgan Hinton,
Laura M. Richards, Sheila Cross Reid, Betty King and a member of the Zoning
Commission.

ATTESTED BY: _____



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: OCT 23 1997

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

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16207

As Director of the Board of Zoning Adjustment, I certify and attest that on OCT 23 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Stephen N. Gell, Esquire
1000 Thomas Jefferson Street, N.W.
Suite 600
Washington, D.C. 20007

Carol Marsh
1300 Florida Avenue, N.W.
Washington, D.C. 20009

Dorothy Brizill
Columbia Heights Neighborhood Association
1327 G Street, N.W.
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Clyde Howard
2217 13th Street, N.W.
Washington, D.C. 20009

Lawrence Guyot, Chairperson
Advisory Neighborhood Commission 1B
P.O. Box 73710
Washington, D.C. 20056-3710

A handwritten signature in cursive script, reading "Madeliene H. Dobbins", written over a horizontal line.

MADELIENE H. DOBBINS
Director

DATE: OCT 23 1997