

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington D.C. 20001**

Appeal of Dr. Joan Evelyn Kinland

Appeal No. 18827

DCRA'S PRE-HEARING STATEMENT

Appellant alleges that the Embassy Church is improperly: (1) operating a child development center, (2) conducting youth missionary activities on the premises, and (3) allowing people to live in an apartment on the property. The challenge to the Child Development Center is over a year too late. And Appellant's other arguments are without merit because the uses at issue are valid uses of church property.

FACTS¹

The Embassy Church was established in 1922.² It is currently located at 3855 Massachusetts Avenue, N.W. and has been at this location since 1967. The property is zoned R-1-B.

As explained on its website,³ its Mission is to:

¹ At the hearing, Pastor Dave Owens and possibly Property Manager Rochelle Carroll will present testimony regarding the Church, the Church property, and its operations. ZA LeGrant will testify about the zoning issues.

² The Church has been known as Full Gospel Assembly and Christ Church. It formally changed its name to Embassy Church in 2012.

³ <http://www.representjesus.com>

... pursue authentic Christianity by growing to know GOD and the Bible by **being disciples of JESUS** and by **making disciples of JESUS**

... fervently commit to spiritually **powerful prayer** with absolute dependence upon the fellowship and gifts of the HOLY SPIRIT for life and ministry in Washington, D.C.

... wholly give ourselves to the **passionate worship** of our loving HEAVENLY FATHER – in our lifestyles and through Biblical expressions of praise

... celebrate diversity to the glory of GOD through **loving hospitality** by welcoming and caring for people of all nations, cultures, and generations, and of any social, economic, political, and religious background

... embrace unity for the purposes of GOD by developing **real relationships** marked by CHRIST-like grace and truth

... love and serve the spiritually, relationally, and economically poor of our city and world through **compassionate outreach** characterized by – prayer, power of the SPIRIT, friendship, service, and compassion

... practice **strategic missions** by preparing, training, serving, and supporting CHRIST-like leaders to share the Good News of JESUS with people from all nations in our church, city, and world.

The church property includes a large church building that is approximately 38,000 square feet.⁴ The building includes a chapel which takes up a large part of the building, offices, a two bedroom apartment that houses four staff members, accommodations for the "Youth with a Mission" program, and a child development center that was issued a Certificate of Occupancy in September 2011. Exhibit B, C of O. The Youth with A Mission program provides ministry training and outreach activities for young adults in the US and around the world. The ministry training includes instruction and mentorship in prayer, worship, Bible instruction, communication of Christian love and faith, community development, missions, and various and numerous community service projects.

⁴ Exhibit A, Embassy Church Building drawing.

Trainings for each group of approximately 30 students are typically one to three months, at which time another group of youth begin training.⁵ The live in staff members are directors of the ministry training program.

Besides using the property for the above described purposes, the Embassy Church uses the premises for church services (weekly), various Life Group meetings (weekly), bible studies (weekly), bible and life training classes (weekly), English conversation classes (periodic), health screenings (periodic), holiday services and events (seasonal), and weddings, funerals and worship programs (as scheduled).

The Church also engages in outreach related initiatives and activities in the neighborhood, throughout Washington D.C., and internationally including meal service and distribution, education, counseling, disaster relief, missions support and projects, unity walk, nursing home and assisted care facility outreach, and prayer ministry.

Appellant, Dr. Kinland, is a neighbor of the Church. She opposes the Church using its property for the child development center, the apartment for the staff members, and the Youth with a Mission program. In September 2013, she complained to the Zoning Administrator (ZA). By May 16, 2014 letter, the ZA responded concluding that the uses were allowed. Exhibit C, ZA Letter. In July 2014, Appellant filed this appeal.

⁵ See <http://www.ywam.org/> for more information.

ARGUMENT

1. The Certificate of Occupancy for the child development center was issued more than 60 days before the appeal was filed.

Appellant argues that the Zoning Administrator erred in three ways. Her first argument is that the Zoning Administrator should not have issued a Certificate of Occupancy for the child development center. The problem with this argument is that the Certificate of Occupancy for the Center was issued September 1, 2011. Exhibit B. Since the rule is that an appeal of a decision of the Zoning Administrator is untimely if not filed within 60 days of the decision and the appeal was not filed until July 2014, it seems clear that this argument was made too late. See 11 D.C.M.R. § 3112.2(a).

Nonetheless, Appellant's position is that the challenge is timely because it was filed within 60 days of the May 16, 2014 letter issued by the ZA responding to various concerns raised by Appellant, including Appellant's claim that the Certificate should have not been issued. However, not every action of the ZA is an appealable decision. As the D.C. Court of Appeals has stated, a ZA decision "is separately appealable [only] where it provides the first notice from which an aggrieved person knew or 'reasonably should have ... know[n],'.... of the resolution or decision that the certificate represents..... [A letter reaffirming a prior decision] does not, however, start another sixty-day appeal period as to any and all DCRA zoning decisions affecting a project that preceded issuance of the [letter]." *Basken v. DCBZA*, 946 A.2d 356, 367 (D.C. 2008).

What that means for this case is that the May 16, 2014 ZA letter is appealable only if its issuance was the first notice that the Zoning Administrator

would issue a Certificate of Occupancy for a child development center. But an actual Certificate for a child development center was issued in September 2011, almost three years before this appeal was filed. Therefore, Appellants knew or should have known that a Certificate had been issued more than 60 days before Appellant filed this appeal. So the challenge to the child development center is untimely.⁶ See *Appeal No. 17830 of L. Napoleon Cooper* (2009)(the Board decided that the Appellant could not appeal the issuance of a Certificate of Occupancy because a building permit had been issued a year and a half earlier which had allowed the building to be used for the challenged purposes).

2. The premises may be used for missionary purposes.

Much of Appellant's pre-hearing statement is focused on the child development center. But it is not her only objection. Appellant also argues that the Church is improperly conducting missionary activities on the property. This argument should be rejected because the Board has previously recognized that activities that are an integral part of a church's mission are allowed as part of the church use.

In *Application No. 18418 of Pilgrim Baptist Church*, attached as Exhibit D, the Church had requested a special exception to use an existing building for administrative offices. The Board decided that no relief was required. It stated:

⁶ Though it is not necessary for the Board to address the merits of the child development center issue, it is also worth pointing out that using church property for child care purposes may be allowed as part of the church use. See *Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment*, 816 A.2d 41, 48-49 (D.C. 2003)(child development center allowed under campus plan as "mixed use education/educational support.")

Because the proposed administrative functions are an integral part of the Church's operations, the administrative activities at the subject properties may operate as a matter-of-right as part of the Church. For zoning purposes, there is only one use at both properties, the "church" use. A "church or other place of worship" is allowed to operate as a matter-of-right beginning in the R-1 Zone, carrying through to the R-5 Zone. (See, §§ 201.1(d), 303.3(a), 320.3(a), 330.5(a), and 350.4(a).) As such, the administrative activities which support the Church's mission are allowed as part of the "church" use.⁷

The rule that comes out of the *Pilgrim Baptist Church* case is that any operations conducted by a church that are performed in support of the church's mission are allowed in the R-1 through R-5 zones as a matter of right.⁸ Applying that rule to the facts of this case, the Youth with a Mission program is allowed as part of the Church use.

Embassy Church's stated missions include compassionate outreach and training church leaders. The Youth with a Mission program provides ministry training and outreach activities for young adults. The ministry training includes instruction and mentorship in prayer, worship, Bible instruction, communication

⁷ The Board's decision is consistent with Rathkopf's *The Law of Zoning and Planning*, which provides that "[w]hat constitutes an allowed church or religious use generally has changed from a place of worship alone, used once or twice a week, to a church used... for various parochial and community functions." Exhibit E. As a result, courts have approved church uses as varied as "mortuaries..., playgrounds,... day care centers,... [and] residency programs." *Id.*

⁸ There seems to be little room to second guess a church's stated purpose for its actions. *Western Presbyterian Church v. Board of Zoning Adjustment of District of Columbia*, 862 F. Supp. 538, 547 (D.D.C. 1994)(in deciding that it was unconstitutional to apply zoning regulations to prohibit church from operating program in church building to feed the poor, the court stated "[o]nce the zoning authorities of a city permit the construction of a church in a particular locality, the city must refrain, absent extraordinary circumstances, from in any way regulating what religious functions the church may conduct. Zoning boards have no role to play in telling a religious organization how it may practice its religion.") See also *Thomas v. Review Bd. of Indiana Employment Sec.*, 450 U.S. 707, 714 (1981) ("The determination of what is a 'religious' belief or practice ... is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.").

of Christian love and faith, community development, missions, and various numerous community service projects. As Pastor Dave Owens will testify, the program enhances the Church's mission to be a place of God's Presence, a house of prayer for all nations, a church that serves those who are materially and spiritually poor, a people who are a witness to the resurrection of Jesus by the Power of the Holy Spirit, and a ministry that plants ministers and ministries to serve throughout our city and world. Since the program furthers these Church objectives, it is a permissible use of the church property. See *Havurah v. Zoning Bd. of Appeals of Town of Norfolk*, 177 Conn. 440 (1979)(overnight accommodations used as part of church activities were a permissible use of synagogue); *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 149 (2000)(conversion of part of a convent into apartments for homeless women was a valid use).⁹

3. The apartment is a valid church use of the property.

Appellant's final argument is that the ZA erred in deciding that the premises may be used to house staff members. But as with the Youth with Mission program, utilizing the premises for this purpose is also allowed as part of the church use.

It is obvious that there is nothing inherently objectionable about allowing religious based residential use of the premises. After all, rectories, vicarages, and

⁹ At minimum, the Youth with a Mission program would be allowed as an accessory use. The Zoning Regulations specifically allow for "accessory uses customarily incidental to the uses permitted in R-1 Districts." 11 D.C.M.R. § 202.11. Under the facts of this case, the use of the property for the program is permissible because it is customarily incidental to the dominant permitted church use of the property.

parsonages, which all allow church related residential uses, are permitted in R-1 Districts like the one at issue as a matter of right. 11 DCMR § 201.1(l).

And while Appellant seems to claim that the Church is exceeding any permissible residential use of the property by allowing people other than the pastor to live in the apartment, this argument should be rejected. The individuals who live in the apartment are members of the Church staff. They are the directors of the Church's ministry training program. As explained above, that program advances the Church's missions. Obviously, for the program to operate it needs staff members to direct it. And since the missionary students temporarily reside on the property, the directors of the program also need to be present on the property at all times as well. Thus, the live in staff members are an integral part of the Church's mission. Therefore, the apartment at issue is allowed as part of the Church use.¹⁰

CONCLUSION

For the above reasons, the Board should deny the appeal.¹¹

¹⁰ Like the Youth with Mission program, even if the residential uses of the property are not allowed as part of the church use, they would be allowed as accessory to the church use.

¹¹ Appellant makes a variety of arguments in its briefs, most of which are focused on the uses at issue not being allowed. As explained above, the challenges are either untimely or the uses at issue are permissible uses of the property. And despite Appellant's claims to the contrary, no special exception is needed because as the Board stated in *Pilgrim Baptist Church*, the uses "may operate as a matter-of-right, [so] no special exception relief is required." Appellant also argues that "ridiculous consequences" will result from upholding the ZA decision. This is a sky is falling argument that even goes so far as to argue that denying Appellant's appeal would allow restaurants to convert to fast food establishments. Obviously, that is false. The property at issue involves a church. So no matter what the Board decides, this case will have no application to non-church uses like restaurants.

Respectfully Submitted,

MELINDA BOLLING
General Counsel
Department of Consumer and
Regulatory Affairs

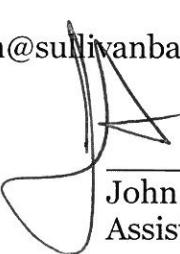
Date: 10 /1 /14


John Postulka
Assistant General Counsel
Office of General Counsel
Department of Consumer and
Regulatory Affairs
1100 4th Street, S.W., Suite 5266
Washington, D.C. 20024
(202) 442-8403 (office)
(202) 442-9447 (Fax)
john.postulka@dc.gov
*Attorney for Department of
Consumer and Regulatory Affairs*

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of October 2014, a copy of the foregoing Brief
was served to:

Martin Sullivan [msullivan@sullivanbarros.com]
Attorney for Appellant


John Postulka
Assistant General Counsel