

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



May 16, 2014

VIA FIRST CLASS MAIL

Arnold D. Spevack, Esq.
Lerch Early & Brewer
3 Bethesda Metro Center, Suite 460
Bethesda, MD 20814

RE: Zoning Issues for Property 3855 Massachusetts Avenue, NW

Dear Mr. Spevack:

This letter serves as a partial response to your correspondence dated September 13, 2013, regarding the Embassy Church located at 3855 Massachusetts Avenue, NW, which is in the R-1-B District (the "Church Property"). The scope of this response is limited to those issues in your letter governed under the Title 11 of the District of Columbia Municipal Regulations (the "Zoning Regulations") and within my purview as Zoning Administrator for the District of Columbia.

It is my understanding that your firm represents Dr. Joan Kinlan and Leo Boucher who own and reside next door to the Church Property at 3843 Massachusetts Avenue, NW, and have several complaints about the use of the Church Property, including that the child care facility operating at the church was not granted special exception approval by the Board of Zoning Adjustment and that the residential use and activities by religious organizations other than Embassy Church are occurring on the Church Property without a certificate of occupancy. Following is my response to these matters.

Approval for Child Care Facility

Embassy Church leases a portion of the first and second floors of the Church Property to the St. Alban's Early Childhood Center ("St. Alban's") for the operation of a child care facility. Immediately prior to the child care facility use, the same area of the Church Property was occupied by the Washington Latin Charter School ("Washington Latin") for students in 5th through 8th grades.

On August 12, 2011, the District issued a building permit to St. Alban's for certain improvements for the child care facility space. Said building permit (Permit No. B1105058, which is attached as Exhibit A), indicates that the then existing use of the

space by Washington Latin was the same as the use then being proposed by St. Alban's -- education for six or more children over the age of 2-1/2 years.

On September 1, 2011, the District issued a certificate of occupancy to St. Alban's for the child care facility. According to the certificate of occupancy, said use is limited to a total of 88 children between the ages of 2-1/2 to 5 years of age. A copy of the certificate of occupancy (Permit No. C01002760) is attached as Exhibit B. According to the certificate of occupancy for Washington Latin, the charter school use was limited to 250 students in 5th through 8th grades, with 40 staff persons. (See Permit No. CO0800311 attached as Exhibit C.)

It appears, based on the information provided when the building permit and the certificate of occupancy were issued, it was determined that the child care facility did not constitute a change of use from the prior charter school use on the Church Property. Both the child care facility and the charter school use are described on the permit and the certificate of occupancy as education for six or more children over the age of 2-1/2 years. Therefore, special exception approval for the child care facility was not required.

Residential Use on Church Property

It is our understanding that there is an occupied two-bedroom apartment unit in the back corner of the church, above the church offices. It is well accepted that a dwelling unit for the pastor or minister of a church is deemed to be a typical, appropriate accessory use to a church. Further, pursuant to Section 201.1(1) of the Zoning Regulations, a rectory is permitted in the R-1 Districts as a matter of right.

The apartment unit on the Church Property constitutes a one-family dwelling, which is defined in Section 199 of the Zoning Regulations as a "dwelling use exclusively as a residence for one (1) family". Under Section 3203.1, a one-family dwelling is exempt from the requirements of a certificate of occupancy. That provision specifically reads:

"Except as provided in §§ 3203.7, 3203.8, 3203.9, or the second section sentence of this subsection, no person shall use any structure, land, or part of any structure or land for any purpose until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Code, Title 12 DCMR. *The requirements of this subsection shall not apply to:*

(a) *A one-family dwelling; or*

(b) A community based residential facility to be occupied by six (6) or fewer persons with a handicap plus residence supervisors, as permitted by right in residence and commercial districts pursuant 11 DCMR §§ 201.1(f) and 330.5(d)."

(Emphasis added.)

Based on the foregoing, a certificate of occupancy is not required for the occupancy of the apartment unit on the Church Property.

Missionaries Staying at Church Property and Use of Church Property by Other Religious Organizations

It is my understanding that the "Youth With a Mission" program is currently operating at the Church Property. Through this program, the Embassy Church houses approximately 30 youth who stay at the church in intervals of approximately three months. In addition, the occupied area of the Church Property for this use is 4,568 square feet, or 10.63% of the building. This office has determined, based on prior similar cases, that the "Youth With a Mission" program is an allowable accessory use of the Embassy Church and is, therefore, permissible under the Zoning Regulations. Similarly, religious activities at the church by other organizations would be allowable accessory uses to the church use that do not require a separate certificate of occupancy.

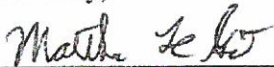
In light of the foregoing, I find: (1) the building permit and the certificate of occupancy for the child care facility were properly issued because it was determined that the conversion of the church space from the charter school to the child care facility did not constitute a change in the use of the Property; (2) pursuant to Sec. 3203.1, the apartment unit on the Church Property does not require a certificate of occupancy; and (3) missionary programs and other similar activities by Embassy Church and other religious organizations are permitted as accessory uses to the primary church use and do not require separate certificate of occupancy.

District Department of Transportation's Public Space Regulation Administration Concerns

There were several concerns raised in the correspondence about the Church Property that relates to the use of public space, including the placement of the childcare playground. Our office referred these concerns to the District Department of Transportation's ("DDOT") Public Space Regulation Administration ("PSRA") for investigation and follow up with your office. I believe that you initially received communication from Matthew Marcou, Deputy Director of the PSRA, on December 26, 2013 informing you that the public space matters were being investigated by their office. Please feel free to follow up with DDOT, if they have not provided you with a current update on their inspection and enforcement efforts.

Please do not hesitate to contact me if you have any additional questions or concerns.

Sincerely,



Matthew LeGrant
Zoning Administrator

Cc: Melinda Bolling, Esq., General Counsel, DCRA
Pastor Dave Owens, Embassy Church
Leila M. Jackson Batties, Holland & Knight