

	<p><b>ADVISORY NEIGHBORHOOD COMMISSION 3C</b>  <b>GOVERNMENT OF THE DISTRICT OF COLUMBIA</b>  <i>CATHEDRAL HEIGHTS • CLEVELAND PARK</i>  <i>MASSACHUSETTS AVENUE HEIGHTS</i>  <i>MCLEAN GARDENS • WOODLEY PARK</i></p>
<p>Single Member District Commissioners  01-Lee Brian Reba; 02- Gwendolyn Bole; 03-David Valdez  04- Vacant; 05- Margaret Siegel; 06-Carl Roller  07- Victor Silveira; 08-Catherine May; 09-Nancy MacWood</p>	<p>3601 Connecticut Avenue, NW Suite L-06  Washington, DC 20008  Website <a href="http://www.anc3c.org">http://www.anc3c.org</a>  Email <a href="mailto:all@anc3c.org">all@anc3c.org</a></p>

## ANC 3C Resolution No. 2015-004

### **Regarding a Request for Enforcement to be Made to the Zoning Administrator to Halt the Child Development Center Use and Multi-family Housing Use at Embassy Church; 3855 Massachusetts Avenue NW**

Whereas, Embassy Church (“Owner”), owner of the property located at 3855 Massachusetts Avenue, NW (the “Subject Property”), has caused the Subject Property to be used for a child development center (“CDC”) for up to eighty-eight (88) children, and also uses the Subject Property, among other uses, as housing for at least three (3) families;

Whereas, the CDC use is not permitted as a matter-of-right and is only permitted by special exception approval of the Board of Zoning Adjustment (“BZA”), and Owner has never applied for nor received such special exception approval;

Whereas such special exception requires notice to the ANC, which triggers its right to participate and the opportunity for ANC views to be given great weight by the Board of Zoning Adjustment and the process failure denied the ANC its right to represent the community on this matter;

Whereas, the CDC operates pursuant to Certificate of Occupancy #CO1002760 (the “C of O”), which purports to authorize the use of the Subject Property as a child development center for 88 children, with a total occupancy load of 88 and no mention of the number of CDC staff;

Whereas, Ms. Joan Kinlan, neighbor to 3855 Massachusetts Avenue, NW, appealed the Zoning Administrator’s decision to allow the CDC to operate in BZA Appeal No. 18827, during which the Zoning Administrator offered no defense on the substantive issue of the CDC use requiring a special exception, but instead filed a Motion to Dismiss for Failure to Timely File, which the Board granted;

Whereas, in the BZA Appeal decision meeting, the BZA commented that it likely would have granted the appeal but for the untimely filing because the CDC use is not permitted as a matter of right;

Whereas, pursuant to District of Columbia Court of Appeals case law involving nonconforming and illegal uses, a certificate of occupancy for an illegal use may be revoked by the Zoning Administrator at any time, regardless of the passage of time; therefore, where the BZA believed it was restricted in its ability to entertain the appeal on procedural grounds, the Zoning Administrator has no such restriction against revoking the C of O and requiring the CDC to pursue special exception approval, respecting the appropriate ANC review;

Whereas, The D.C. Court of Appeals has ruled that “[i]ssuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the applicable Construction Codes, Zoning Regulations or other laws or regulations of the District.” *Gorgone v. D.C.* BZA 973 A.2d 692 (D.C., 2009),

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citing Kuri Brothers, Inc. v. D.C. BZA, 891 A.2d 241 (D.C., 2006) and in Krui Brothers, the Court also ruled that “[i]f the C of O were construed to authorize such a use without the required special exception, it would have been invalid and subject to revocation as having been issued in error.” Kuri, footnote 6;

Whereas, the Court of Appeals has also ruled that “[a] certificate of occupancy is an “enforcement tool” that is used by administrative officers “to check proposed uses, as well as proposed structures, against the [applicable] ordinances.” Gorgone, citing American Law of Zoning §1.03[4][d], 1-54 (5th ed. 2008) (a CO “construed to authorize ... a use” that is not permitted by the zoning laws is “invalid and subject to revocation as having been issued in error”);

Whereas, based on the above case law, the Zoning Administrator clearly has the authority and the obligation to require the CDC to obtain special exception approval if it wishes to continue operating, or to revoke the C of O if no special exception is applied for and approved;

Whereas, at the BZA appeal hearing, the Owner admitted that in addition to the thirty (30) youth living in Embassy Church, there were three families, with children, also residing within the Embassy Church building, despite the fact that the Owner had apparently previously represented to the Zoning Administrator that only one family resided in the building;

Whereas, in his letter dated May 16, 2014, the Zoning Administrator stated that just one family could reside in a church, but only if it was the family of the “pastor or minister” of the church:

Therefore Be It Resolved, therefore, that ANC 3C requests the Zoning Administrator (i) to revoke the CDC C of O pursuant to the case law noted above, if the CDC does not apply for special exception relief by March 31, 2015; and (ii) to institute the appropriate enforcement action for the Owner’s illegally housing three families within Embassy Church;

Be It Further Resolved, that the ANC3C Chair, the ANC3C-07 Commissioner, and or their designees are authorized to represent the commission on this matter.

**Attested by**



**Catherine May**

**Vice-Chair, on January 20, 2015**

*This resolution was approved by a voice vote of 5-0, with one abstention on January 20, 2015 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 8 commissioners) was present.*