GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16826 of City Gate, pursuant to 11 DCMR § 3104.1 for a special exception to permit church programs under section 216, and subsection 1553.2, in the SSH/R-1-B District at premises 5917 16th Street, N.W. (Square 2724, Lot 9).

Note: After the public hearing, the Board approved special exception relief under §§ 216 and 1553.2 to permit the property to be used for the proposed church programs.

HEARING DATES: February 12, 2002; February 19, 2002

DECISION DATES: April 2, 2002; May 7, 2002

DECISION AND ORDER

City Gate, a nonprofit faith-based organization, filed an application with the Board of Zoning Adjustment on November 23, 2001, pursuant to 11 DCMR § 3104.1 for special exceptions under 11 DCMR §§ 216 and 217 to use the premises at 5917 16th Street, N.W., for church programs and a nonprofit office. The property, Lot 9 in Square 2724, is located in an R-1-B Zone District, within the Sixteenth Street Heights (SSH) Overlay District.

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. After review by the Office of Zoning and the Board, the application was amended to request relief under § 216, church programs in an R-1 District, and § 1553.2, new nonresidential use in the SSH Overlay District. Since the property is not a historic property, § 217, relating to nonprofit organization use of existing residential buildings, is not applicable. The Board also determined that relief from § 2101.1, the schedule of required parking spaces, is not necessary due to the grandfathering provisions of the zoning regulations. After the public hearing, the Board approved special exception relief under §§ 216 and 1553.2 to permit the property to be used for the proposed church programs.

PRELIMINARY AND PROCEDURAL MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated December 26, 2001, the Office of Zoning advised Advisory Neighborhood Commission (ANC) 4A, the

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ANC for the area within which the property that is the subject of this application is located; the ANC Commissioner for the affected Single-Member District; the affected Ward Councilmember; and the D.C. Office of Planning of the filing of the application.

The Board scheduled a public hearing on the application for February 12, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on January 4, 2001, mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 4A notice of hearing. Notice of hearing was also published in the *D.C. Register* on January 11, 2002, at 49 DCR 235. The applicant's affidavit of posting indicates that on January 28, 2001, zoning posters were placed on the 16th Street and Olgethorpe Street frontages of the property, in plain view of the public. The Board received a number of written submissions from the applicant, ANC 4A, and OP just before the hearing. To allow additional time for review of the new submissions, the Board postponed the hearing to February 19. The Board announced the new hearing date at the February 12 hearing.

Filing Fees. The applicant requested a waiver of the filing fee. The Board's fee waiver rule, 11 DCMR § 3180.4, however, does not apply to special exception and variance applications. It is limited to cases in which the National Capital Planning Commission, an Advisory Neighborhood Commission, or a nonprofit citizens association or association created for civic purposes files an appeal of an administrative determination carrying out or enforcing the Zoning Regulation. Accordingly, the Board denied the applicant's request.

Applicant's Case. City Gate states that in pursuing special exception approval to use the property for church programs, it seeks to enhance community life and to assist neighborhood and city residents in personal and spiritual growth, education, and community service, consistent with the zoning regulations and previous use of the property. Lynn Bergfalk, the executive director and president of City Gate, presented oral testimony and written materials in support of the application.

D.C. Office of Planning Reports. In its initial report dated February 5, 2001, OP indicated that it lacked sufficient information regarding the nature and intensity of the proposed use to make a recommendation. OP stated, however, that it was concerned that the proposed transient accommodations could be disruptive to the community. It also questioned whether the building was a "church building," as required under § 216.3. In a supplemental report dated February 11, 2002, OP indicated that while supportive of the proposed church programs, it could not recommend approval. OP stated that the proposed programs do not satisfy several conditions for approval under §§ 216 and 1553.2, and would be disruptive to the community. Specifically, OP was concerned that the combination of programs would cause constant activity to and from the property. OP indicated that given the proposed occupancy limit of 75 persons, the applicant does not meet the parking requirement. OP also felt that since the prior owner, a church, had

vacated the premises, the building was no longer a church building. Maxine Brown-Roberts presented OP's report at the hearing.

District Department of Transportation (DDOT). In its report dated January 30, 2002, DDOT states that the traffic impacts for the proposed use appear minimal, and that DDOT has no objection to the proposal.

ANC Report. In its letter dated February 11, 2002, ANC 4A indicates that a duly-noticed meeting, with a quorum present, ANC 4A voted to oppose the application. The ANC identified the following issues and concerns: lack of compatibility with the SSH Overlay District; intensification of the prior use; the proposed high turnover of the transient residents; lack of adequate off-street parking; the use of space for office-type services and programs as inconsistent with residential use; and lack of community support for the programs. John Chagnon presented the ANC's report at the hearing.

Persons in Support of the Application. Marina Wells, a neighborhood resident and member of St. Luke's Serbian Orthodox Church, which had previously owned the subject property, testified in support of the application. She stated that street parking spaces are readily available, and would provide ample parking for the proposed church programs. She also provided the Board with a petition signed by some 60 neighbors in favor of the application. Rick Yorgey, a City Gate board member, testified regarding the need in the community for the proposed English as a Second Language (ESL) and tutoring programs. Marilyn Norris, a volunteer missionary, described some of her work with City Gate and the types of programs and classes that City Gate would provide. The Board also received letters in support of the application from the District of Columbia Baptist Convention, The Downtown Cluster of Congregations, and the Pennsylvania Quarter Neighborhood Association, all of which were familiar with City Gate or Reverend Bergfalk's work.

Persons in Opposition to the Application. Earl E. Shamwell, Jr., president of the Sixteenth Street Heights Civic Association (SSHCA), filed a letter indicating that SSHCA opposed the application on the grounds that the proposed use would entail an expanded nonresidential use, with the programs available to people city-wide with no demonstrated need for the programs in the neighborhood, and would result in increased traffic, noise, and parking problems. The Board also received a letter in opposition from Jennifer Tucker and Phil McLaurin, residents of Oglethorpe Street, who were concerned about maintaining the residential character of their neighborhood and about the potential for objectionable parking conditions.

Decision Meetings. At its April 2, 2002, public meeting, the Board postponed its decision to allow additional time for research relating to the requirements of § 216 and the parking requirements for the proposed use. The Board took the application up again at its May 7, 2002, meeting and by a 4 – 0 – 1 vote, approved special exception relief under §§ 216 and 1553.2 to permit the proposed church program use. The Board also

determined that the applicant did not require relief from the parking requirements of § 2101.1.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The property that is the subject of this application is located at 5917 16th Street, N.W. (Square 2724, Lot 9), at the corner of 16th Street and Oglethorpe Street, in an R-1-B/SSH Overlay District.

2. There is a 20-foot wide public alley at the rear of the property.

3. The property is developed with a large, two-story plus basement, brick building that fronts on 16th Street. The building was constructed before May 12, 1958.

4. The floor plans indicate that there is a chapel, narthex, meeting room and office, classroom, and half-bath on the first floor. There are five bedrooms and two full bathrooms on the second floor. On the third floor, there are two bedrooms and a full bathroom. The basement consists of a main room, kitchen, and utility room. Ex. 25.

5. The site is located just south of the intersection of two arterial streets, 16th Street and Military Road. It is generally bounded by 16th Street to the west, Oglethorpe Street to the north, residences to the east, and Manchester Lane to the south. The surrounding community is developed predominantly with one-family detached dwellings. Along 16th Street, there are a number of embassies and nonresidential uses, including churches. The Brightwood Elementary School is located two blocks away.

The Proposed Church Program Use

6. City Gate is a nonprofit, faith-based organization incorporated on October 11, 2000, in the District of Columbia. It currently operates a number of community outreach programs within the District. Ex. 44.

7. City Gate would conduct a number of programs on-site, and use the subject building as the central location and coordination point for a number of off-site programs.

8. Once a month, City Gate would have a week night or Sunday gathering for local City Gate volunteers and volunteers from the District of Columbia Baptist Convention. The gatherings would typically include worship or study in the chapel. Ex. 44; Tr. at 135 (Feb. 19, 2002). City Gate anticipates that its monthly meetings would consist of 25 to 35 people. Tr. at 175 (Feb. 19, 2002); Ex. 25.

9. City Gate characterizes its programs as "neighborhood-oriented, small scale programs." Tr. at 153 (Feb. 19, 2002). It would provide neighborhood children and youth with homework assistance and mentoring programs that teach faith, values, and life skills. Exs. 42, 44.

10. City Gate would also provide ESL (English as a Second Language) tutoring and classes. Exs. 42, 44.

11. Rick Yorgey, who lives nearby and has extensive experience with Brightwood Elementary School, testified that that there is a tremendous need for ESL instruction and homework assistance and tutoring in the neighborhood. Ex. 41.

12. At the time of the hearing and for the immediate future, City Gate proposed after-school tutoring three afternoons a week, plus one morning and one evening ESL class each week, and on Saturdays, a children's cultural and language day program. Ex. 42.

13. For the long-term, City Gate proposed the following scheduling parameters. City Gate indicates that these parameters represent the time slots available for the programs, and that within each parameter, it might provide additional ministries or move the classes or programs from one day to another, but that it would not increase the population in any given time slot. Ex. 42.

A. School-Year Program:

	Activity	Population
Monday – Friday		
9:30 a.m. – Noon	ESL Class	10-15 students, 2 volunteers
3:30 p.m. – 5:30 p.m.	After-School Tutoring	12-18 students, 4-6 volunteers
7:00 p.m. – 9:00 p.m. (Mon. – Thurs. only)	ELS Class	10-15 students, 2 volunteers
Saturday		
9:30 a.m. – 4:00 p.m.	Children's Culture/ Language Program	15-20 students, 2 volunteers

B. Summer Program:

	Activity	Population
Monday – Friday		
9:30 a.m. – Noon	ESL Class; or Children's enrichment program	10-15 students, 2 volunteers
1:00 p.m. – 5:30 p.m.	Children's enrichment program	12-18 children, 4 volunteers
7:00 p.m. – 9:00 p.m. (Mon. – Thurs. only)	ESL Class	10-15 students, 2 volunteers

Saturday 9:30 a.m. – 4:00 p.m.	Children's Culture/ language program	15-20 students, 6 volunteers

14. City Gate would also use the building for housing up to eight long-term volunteers and City Gate staff, including family members. Tr. at 152 (Feb. 19, 2002); Ex. 44.

15. In addition, City Gate would provide overnight hospitality for up to ten short-term mission volunteers for up to one week on a space available basis. Most of the short-term residents would come from churches or religious organizations outside of the District of Columbia. They would arrive by air or bus transportation, and be transported by a church van to and from the premises during their stay. Ex. 25.

16. The majority of mission activity would not take place at the property, but at other ministry sites and churches. Ex. 44.

17. City Gate would not provide housing on the premises for more than 15 persons. Ex. 25.

Findings with Respect to Special Exception Criteria

18. On July 19, 2001, the Calvary Baptist Church took action to sponsor the establishment of City Gate for the purpose of maintaining the Church's existing community ministries and extending the Church's community outreach. Tr. at 146-47, 161-62 (Feb. 19, 2002); Ex. 44.

19. City Gate also has a contract with the District of Columbia Baptist Convention to train and deploy volunteers in ministries related to the 140 churches in the Convention. Tr. at 148 (Feb. 19, 2002); Ex. 44.

20. Based on the above, the Board finds that the proposed use is a program conducted by a church congregation and a group of churches through a faith-based organization.

21. The Board also finds that City Gate is not organized for profit, but rather organized exclusively for the promotion of the social welfare of the community through providing mentoring, after-school tutoring, children's enrichment programs, and ESL classes to members of the community and through recruiting, training, and deploying volunteers to work in various social ministries throughout the city. Tr. at 154 (Feb. 19, 2002); Ex. 27.

22. The subject building has not been used as a one-family dwelling since at least 1957. Tr. at 138 (Feb. 19, 2002).

23. The previous certificate of occupancy, issued in 1974, authorized use of the basement and first floor as a "church and rectory seating less than 75 persons." Tr. at 155 (Feb. 19, 2002).

24. The previous owner, St. Luke's Serbian Orthodox Church, had a chapel and church offices on the ground floor, and a kitchen and fellowship and Sunday school space for children in the basement. St. Luke's used the second and third floors as a rectory and housing for clergy and church workers or guests. Ex. 25.

25. The applicant has not proposed any new construction or alterations to the building.

26. Given its interior configuration, the Board finds that the building is an existing church building.

27. All programs to be conducted on-site would be conducted by volunteers and City Gate staff. Tr. at 155 (Feb. 19, 2002).

28. City Gate would not put up any signs or displays advertising its programs. Tr. at 156 (Feb. 19, 2002).

Potential Adverse Impacts

29. Noise and Disruption. The proposed church program use would be similar to the immediately preceding church use, with the exception that there would not be a large number of congregants attending Sunday services and special occasions. St. Luke's occasionally had as many as 150 people in attendance at special outdoor events. While City Gate might have as many as 75 persons at a seasonal event, in general its church program use would be a less intensive use than the previous church use. Tr. at 136, 139, 174, 219 (Feb. 19, 2002); Ex. 26.

30. The programs to be offered are small-scale educational and religious programs, geared to the neighborhood, with a number of participants from the neighborhood. Tr. at 156 (Feb. 19, 2002). The Board finds that they would not be disruptive to the community.

31. The fact that the programs would not be overlapping also reduces or eliminates the likelihood that there would be any disruptive effects on the community.

32. There is no evidence that would tend to indicate that the programs would have objectionable noise impacts. Any noise would consist of human voices and children at play, at a noise level consistent with that of a residential neighborhood.

33. There are no residences facing the property on Oglethorpe Street. Tr. at 154 (Feb. 19, 2002). However, to minimize any impact on the Oglethorpe Street side, the applicant can direct participants to use the 16th Street entrance.

34. Traffic and Parking Impacts. There is a two-car accessory garage at the rear that opens to the alley. There is one additional open parking space in the area between the garage and alley. There is no evidence that the open parking space is illuminated.

35. There are five street parking spaces along the Oglethorpe Street side of the property.

36. Non-rush hour parking is available on 16th Street.

37. The street parking spaces along the subject property are seldom used. Tr. at 184 (Feb. 19, 2002).

38. Public transportation is available on 16th Street.

39. With the exception of the monthly meetings and seasonal events, City Gate anticipates that its programs would require very little parking. Tr. at 184 (Feb. 19, 2002).

40. City Gate anticipates that many of those utilizing its services, including children, youngsters, and ESL students, would be drawn from the neighborhood and use public transportation. Since the programs would generally involve church groups, City Gate also expects that many volunteers would use church vans and not individual vehicles. Tr. at 159 (Feb. 19, 2002).

41. Except for the after-school tutoring and the summer children's enrichment programs, the program times would not coincide with rush hour traffic. Ex. 44.

42. Based on Findings Nos. 34-41, Board concludes that the traffic and parking impacts of the proposed use would be minimal.

43. Other Impacts. There is no evidence that City Gate would alter the appearance of the property, so as to create objectionable design or other conditions.

44. There is no evidence that the proposed use would likely have any other objectionable or adverse impacts on adjacent and nearby property, or on the Residence District.

Harmony with the Zoning Regulations and Map

45. The R-1 District is designed to protect quiet residential areas developed or likely to be developed with one-family detached dwellings. The zoning regulations applicable to the R-1 District seek to stabilize residential areas and promote a suitable environment for family life. *See* 11 DCMR §§ 200.1, 200.2.

46. As explained in 11 DCMR § 1551.3, the Zoning Commission established the SSH Overlay District effective July 29, 1994, to:

(a) Promote the conservation, enhancement and stability of this low-density, single-family neighborhood for housing and neighborhood-related uses;

(b) Control the further conversion of residential housing to nonresidential uses in order to maintain the housing supply and minimize the external

negative impacts of new nonresidential uses that are permitted in the SSH/R-1-B District in order to preserve neighborhood quality; and

(c) Allow the neighborhood to continue to provide a range of health and social service facilities as well as private institutions that provide cultural and religious enrichment and economic vitality, but within the framework of improved public review and control over the external effects of nonresidential uses. The objective is to make more compatible the Comprehensive Plan's goals and policies for maintaining the quality and stability of residential neighborhoods with other policies related to the reasonable provision of human services throughout the District of Columbia.

47. The SSH Overlay District regulations grandfathered existing nonresidential uses with a valid certificate of occupancy, but required that any new nonresidential uses be permitted only with special exception approval. 11 DCMR § 1553.1. For purposes of the overlay, the term "nonresidential" in defined in § 1599.1 as "a permitted use in the R-1 District other than a single-family dwelling."

48 The previous church use and the proposed church program use are "nonresidential" uses as that term is defined in § 1599.1.

49. There is no evidence that that St. Luke's conducted church programs on the property. The Board finds therefore that the proposed church use is a new nonresidential use.

50. The proposed new nonresidential use would not replace a residential use, but rather a more intensive nonresidential use.

51. Since the term "one-family dwelling" is defined in § 199.1 as a "dwelling used exclusively for as a residence for one (1) family" and the term "family" is defined in § 199.1 to include "a religious community not having more than fifteen (15) members," the Board finds that the proposed housing for volunteers and staff, is *not* a nonresidential use within the meaning of the SSH Overlay District regulations.

52. The Board concludes that the proposed church program use would be in harmony with the SSH Overlay District in that it in that it is a less intensive church ministry in an existing church building. It would promote neighborhood stability by providing needed social and educational services, and provide cultural and religious enrichment.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. City Gate is seeking a special exception pursuant to 11

DCMR § 3104.1 to use the subject property for church programs in accordance with §§ 216 and 1553.2.

While the public notice in this case did not reference the requirement of special exception relief under § 1553 (a new nonresidential use in the SSH Overlay District), the Board determined that the notice was sufficient. The notice correctly described the location and nature of the proposed use, including the request for a special exception under §§ 216 and 3104.1 to permit the use of the property for church programs, and indicated that the property was in the SSH Overlay District. The specific conditions listed in § 1553.2 for approving a new nonresidential use in the SSH Overlay District are comparable to the general conditions for special exception relief in §§ 216 and 3104.1, except that § 1553.2 contains more detailed requirements relating to parking. Nonetheless, the notice provided in this case was sufficient to alert the public as to the subject matter of the proceedings and the nature of the relief that was being requested, a special exception to permit the establishment of church programs, a nonresidential use, in the SSH Overlay District. The Board concludes therefore that the notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zone district, provided that the specific regulatory requirements for the requested special exception are met. The Board's discretion in reviewing an application for a new church program use in the SSH Overlay District is thus limited to the determination of whether the applicant has met the requirements of 11 DCMR §§ 216, 1553.2, and 3104.1. In addition, the Board is required to give both the ANC's and OP's recommendations "great weight." *See* D.C. Code §§ 1-309.10(d)(3), 6-623.04 (2001). If the applicant meets the burden of proof for the requested special exception, the Board must ordinarily grant the application. *See The Washington Ethical Soc'y v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 18 (D.C. 1980).

The Board has carefully considered the ANC and OP reports and, as explained in this decision, does not find their recommendations persuasive. Specifically, the Board concludes that the proposed small-scale, neighborhood-oriented church programs, which enjoy neighborhood support, would not be disruptive to the community or the zone plan. The residential use of the building for 15 or fewer religious organization volunteers and staff, which is comparable to the immediately preceding residential use, is a matter-of-right use and not before the Board for review.

The Specific Requirements of § 216

The Board concludes that the proposed church program use would comply with the requirements of § 216. First, as required by § 216.1, the programs would be conducted by a church and group of churches. The Calvary Baptist Church established City Gate, a nonprofit organization, to maintain the Church's community ministries and to extend the Church's community outreach. In addition, City Gate has a contract with the District of

Columbia Baptist Convention, a religious organization comprised of 140 Baptist churches, to train and deploy ministry volunteers. As the work of the Church and the Convention is devoted to religious objectives, the Board concludes the use proposed by City Gate is use for a church program.

Second, as required by § 216.2, City Gate is a nonprofit, faith-based organization, organized exclusively for the promotion of the social welfare of the community. City Gate would provide several small-scale, neighborhood-oriented programs consisting of an after-school tutoring and mentoring program, a summer children's enrichment program, a children's cultural and language program, and an ESL program. In terms of the broader community, City Gate's programs are religious in nature, and consist of recruiting, training, and deploying volunteers to work in various social ministries throughout the city.

Third, as required by § 216.3, the church program would be conducted within an existing church building. The existing building has a long history of institutional use. It served as a church and rectory for St. Luke's from 1974 through 2001, when it was acquired by City Gate. The plans submitted by City Gate show that the building has been modified internally for church use, and that it contains a chapel, narthex, office and meeting rooms, and a basement kitchen. OP questions whether the building ceased to be a church building when St. Luke's vacated the premises. The fact that St. Luke's sold the property and moved to another location is not sufficient to change the character of the building as an already existing church building. For example, in *Foxhall Community Citizens Association v. District of Columbia Board of Zoning Adjustment,* 524 A.2d 759 (D.C. 1987), St. Patrick's Episcopal Church sought a use variance to sell a church building in an R-3 District for conversion to 20 condominium apartments. The building had been used as a church, with a private school and a number of community outreach programs. The Church outgrew the building and moved to a new location. Notwithstanding the fact that the Church had vacated the building and was in the process of selling it for conversion to residential use, the Court characterized the building as "an existing church building" for zoning purposes. As City Gate does not propose any new construction or structural modifications, the Board concludes that the building is appropriately characterized as an "existing church building."

Fourth, as required by § 216.4, the staff conducting the programs would be composed of persons, at least 75 percent of whom volunteer their time and services.

Fifth, under § 216.5, the applicant must demonstrate that the operation of the programs would not become objectionable in the Residence District because of noise and traffic. While OP expressed some concern that there might be some noise impacts as a result of children's outdoor activities, the Board concludes that any such noise would not likely become objectionable. The maximum number of children on the premises at any one time (20 children) is relatively small, the building has an entrance on 16th Street which

may be used to avoid disrupting residents along Oglethorpe Street, the programs to be conducted are indoor programs, and any noise from human voices and children at play would likely be consistent with a residential neighborhood. The Board also concludes that the traffic impacts of the proposed use would be minimal since most of the participants would be drawn from the neighborhood and arrive on foot or by public transportation. Many of the volunteers would arrive in church vans, not individual vehicles.

Sixth, while City Gate has placed a sign on the property identifying the premises, it indicates that it will comply with the restrictions of § 216.6 which require that "No signs or display indicating the location of the church program shall be located on the outside of the building or the grounds."

Finally, pursuant to § 216.7, any authorization of a special exception for a church program is limited to a period of three years.

The Specific Requirements of § 1553.2

The question of whether the SSH Overlay District regulations apply turns on whether the proposed City Gate church program use is an "existing nonresidential use with a valid certificate of occupancy" or a "proposed new nonresidential use." If the program qualifies as an "existing nonresidential use," then it is considered a conforming use and allowed under 11 DCMR § 1553.1 as a matter of right. If on the other hand it is a "proposed new nonresidential use," then it requires special exception approval under § 1553.2.

St. Luke's had a certificate of occupancy to use the building as a church and rectory. There is, however, no evidence that St. Luke's used the building for "church programs." For purposes of the SSH Overlay District regulations, the phrase "nonresidential use" is defined in § 1599.1 as "a permitted use in the R-1 District other than a single-family dwelling." Since a church program would be a new "nonresidential use" as that term is defined in § 1599.1, City Gate requires a special exception under § 1553.2.

Subsection 1553.2 requires the applicant to prove first, that the new nonresidential use is capable of being established and operated without adversely affecting the use and enjoyment of neighboring and nearby properties due to traffic, noise, design, or other objectionable conditions; and second, that there is adequate, appropriately located, and screened off-street parking.

First, the Board concludes that the church program is capable of being established without adversely affecting neighboring and nearby properties. The building has a long history of institutional use, including over 25 years as a church with a permitted

occupancy of 75 persons. With the exception of City Gate's monthly meetings, which are expected to draw 25 to 35 persons, and occasional seasonal events, the maximum number of program participants on-site at any one time would be 20 persons, with 2 to 6 volunteers. The program times do not overlap, and with the exception of the afternoon tutoring and summer children's enrichment programs, do not occur during rush hour traffic. Participants and volunteers would likely walk, arrive in church vans, or take public transportation. Any noise would likely consist of human voices, at levels consistent with a residential neighborhood. There is no evidence of other objectionable impacts, and the design of the building would remain unchanged.

Second, under § 1553.2(b)(1), the applicant must provide the number of parking spaces required by chapter 21 of the Zoning Regulations, with the parking spaces located and designed so that they have the least objectionable effects on contiguous or nearby property because of noise, traffic, or other objectionable conditions. Under 11 DCMR § 2101.1, all buildings erected on or after May 12, 1958, must be provided with parking spaces to the extent specified in § 2101, the schedule of requirements for parking spaces. The subject building was constructed before May 12, 1958; however, under § 2100.4, when the use of a building is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change, additional parking spaces must be provided for the additional requirement in the amount necessary to conform to the schedule of required parking spaces in § 2101.

The use existing immediately prior to City Gate's proposed use was that of St. Luke's Serbian Orthodox Church. St. Luke's had obtained a certificate of occupancy in 1974 to use the basement and first floor of the building as a church and rectory seating less than 75 persons. The upper two floors were used as residences for church workers. Up until March 1, 1985, the parking space schedule in § 2101 specified "No requirement" for church use. 11 DCMR § 2101.1 (1984); Notice of Final Rulemaking, 31 DCR 6585, 6591 (1984) (parking space requirements for churches became effective March 1, 1985). Therefore, the church use existing immediately prior to City Gate's proposed use did not have any parking requirement.

With respect to the proposed church program use, the schedule does not list any parking requirements for church programs, presumably because they are to be carried out "within the existing church building(s) or structure(s)," 11 DCMR § 216.3, such that any church parking would be available for the program. Subsection 2100.4, which requires additional parking spaces when the intensity of use of a building existing before May 13, 1958, increases, does not appear to apply, since City Gate does not propose to increase the intensity of use. Even then, § 2100.7 would require additional parking spaces only if the proposed use would increase the intensity of use of the building by more than 25 percent.

With respect to the proposed religious group residence use, the schedule does not list any parking space requirements; however, for special exception approval under § 215, such residences that house more than 15 persons must provide an "adequate" number of parking spaces. Under § 2101, a rooming or boarding house, a somewhat comparable use, would require two parking spaces. The short-term volunteers residing on the premises would not have vehicles, and the long-term volunteers and City Gate staff would be engaged in City Gate programs.

There are three parking spaces on-site; two in a private garage and one parallel space between the garage and the alley. These spaces comply with § 1553.2(b)(2) – (b)(4) in that the spaces and driveways providing access to them are not located in a required side yard, on the lot between the principal building and a street right-of-way, nor in public space abutting the lot; only one open parking space is provided; and there is no evidence that the open space is illuminated.

Finally, the applicant's programs are not likely to result in objectionable parking conditions in that many of the participants and volunteers would arrive by public transportation, church van, or on foot. In addition, ample street parking is available.

Since the Board has determined that the intensity of use of the building would not increase, the Board concludes that no additional parking spaces are required for the proposed church program use. However, to mitigate any potential parking impacts, the Board is limiting the applicant's certificate of occupancy for church program use to 75 persons and requiring the applicant to make all three parking spaces available for church program use. As conditioned in this order, the Board concludes that the proposed use complies with the specific requirements of § 1553.2.

The General Requirements of § 3104.1

The Board concludes that the proposed special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Map. A church program is permitted in an R-1 District as a special exception. While the City Gate church program would be a "new" nonresidential use, the property has a long history of institutional use, including over 25 years of church use. The church use was more intense in terms of the number of congregants attending Sunday services and special occasions. The proposed church programs are small in scale, neighborhood-oriented, and consistent with the purposes of the R-1 zoning, which is to preserve a family-life environment. The proposed programs are also consistent with the purposes of the SSH Overlay District, which include promoting stability of the residential neighborhood and allowing the neighborhood to provide social service facilities, as well as institutions that provide religious and cultural enrichment.

Finally, as determined in connection with the specific requirements of §§ 216 and 1553.2, the Board concludes that as conditioned in this order, the proposed church program will not adversely affect the use of neighboring property.

For the reasons stated above, it is hereby **ORDERED** that the application is **GRANTED,** subject to the following conditions:

1. This approval shall be valid for a period of three years, beginning on the effective date of the Certificate of Occupancy issued pursuant to this order;

2. The Certificate of Occupancy to be issued pursuant to this approval for church program use shall be limited to 75 persons; and

3. The applicant shall make all three parking spaces on-site available for church program use.

VOTE: 4 – 0 – 1 (Geoffrey H. Griffis, David W. Levy, Curtis L. Etherly, Jr., and James H. Hannaham, to approve; Anne M. Renshaw not voting, not having participated in the case)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUN 2 6 2002

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE

REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.
MS/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16826

As Director of the Office of Zoning, I hereby certify and attest that on JUN 2 6 2002, a copy of the Decision and Order entered on that date in this matter was mailed first class, postage prepaid, or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning this matter, and who is listed below:

Lynn Bergfalk, Executive Director and President
City Gate
3568 Brandywine St., N.W.
Washington, D.C. 20008

James H. Jones, Chairman
Advisory Neighborhood Commission 4A
7600 Georgia Avenue, N.W., Suite 404
Washington, D.C. 20012

John J. Chagnon, Commissioner ANC 4A07
Advisory Neighborhood Commission 4A
7600 Georgia Avenue, N.W., Suite 404
Washington, D.C. 20012

Honorable Adrian Fenty
Councilmember, Ward 4
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Room 506
Washington, D.C. 20004

Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
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Washington, D.C. 20002

Alan Bergstein
Section Chief, Land Use & Public Works Section
Commercial Division
Office of the Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001
MS/rsn

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning