MEMO TO FILE

BZA Order 14327 is associated with this site. The OZ staff included the Order in the case file.

BAB/8.28.02

No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16910
EXHIBIT NO.31

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14327 of Michael Salzberg, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.45 to use the subject structure as a community center building and for a variance from the parking requirements (Sub-section 7202.1) in an R-5-B District at premises 3309 - 16th Street, N.W., (Square 2676, Lot 469).

HEARING DATE: September 18, 1985
DECISION DATE: October 2, 1985

FINDING OF FACT:

1. The subject premises, known as 3309 16th Street, N.W., is located on the east side of 16th Street between Park Road, N.W. and Monroe Street, N.W. The site is located within an R-5-B District.

2. The subject lot is rectangular in shape with a frontage of 20 feet along 16th street and a depth of 100 feet. It has an area of approximately 2,000 square feet. To the rear of the lot (east) is a 15 foot wide public alley accessible by way of Monroe Street. This alley intersects with a 20 foot public alley which bisects the Square. The alley system provides access to two parking spaces located on the subject premises.

3. The subject site is improved with a three story, row dwelling unit. The structure was constructed prior to May 12, 1958, the effective date of the current Zoning Regulations.

4. The surrounding area along 16th Street is characterized by a variety of residential uses and structure types including churches, medical clinics, and several institutional uses. East of 16th Street residential uses predominate before ultimately giving way to the 14th Street commercial corridor. West of 16th Street the area is likewise characterized by a variety of residential uses and structure types.

5. The Family Place is the contract purchaser of the subject site.

6. The Family Place is seeking a special exception under Paragraph 3101.45 of the Zoning Regulations to use the

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subject structure as a community center building. A community center may be located in the R-5-B District if approved by the BZA as a special exception meeting the requirements of Paragraph 3101.45. That Paragraph provides as follows:

a. It is not organized for profit, but exclusively for the promotion of the social welfare of the neighborhood in which it is proposed to be located;

b. It offers no articles of commerce for sale therein;

c. It is not likely to become objectionable in a Residence District because of noise or traffic; and,

d. The use will be reasonably necessary or convenient to the neighborhood in which it is proposed to be located.

7. The Family Place is a private non-profit organization which provides family counseling, guidance and social services to residents of the surrounding Adams Morgan Community.

8. Primary goals of the Family Places are to help pregnant women, bring down the infant mortality rate and stop the handicapping conditions that are found in children not born at healthy birth weights.

9. The proposed community center will provide a broad range of social services including information referal to medical services and direct counseling and guidance. Drop-in services will be available where clients can meet with each other for discussions. Groups will be organized to discuss parenting, pregnancy and other relevant issues. First friends, a community volunteer program, will provide support and information to women who would otherwise be facing pregnancy alone.

10. The clientele of the Family Place would predominately be expectant and new mothers of hispanic origins.

11. The Family Place is currently located in the basement of 1848 columbia Road where it has been operating as a community center since 1981. The need for additional space necessitates the move from the Columbia Road facility to the subject premises.

12. The Family Place was originally intended to serve 50 families. It is currently serving 185 families. Staff members are sharing offices which is undesirable since privacy is required for counseling sessions with clients.

13. At its current location, the Family Place community center operates between the approximately hours of 9:00 A.M. to 5:30 P.M. Monday through Friday. Evening and weekend use of the Center is limited to rare or special occasions e.g.

Mother's Day activities (Sunday) and the installation of officers (evening). On the average, the center services approximately 20 to 30 people per day. The center is staffed by seven individuals, five of whom are full time and two of whom are part time.

14. There will be no increase in staff or extension of hours of operation at the proposed location. A rest area for pregnant women will be added to the center's facilities.

15. The center has received numerous awards and recognition from the community and the District of Columbia government for its programs and staff.

16. The proposed 16th Street location for the subject community center is reasonably convenient to the center's neighboring hispanic clientele.

17. No articles of commerce are offered for sale nor are any articles intended to be offered for sale by the Family Place.

18. The Family Place intends to restore the building facade and renovate the interior. No additions or changes to the exterior configuration of the building are contemplated. The structure's residential appearance will be maintained.

19. The activities of the Family Place will be confined to the interior of the structure. There will be no outside play space.

20. All children at the center will be under the age of three and will be accompanied by a parent.

21. In the past four years that the Family Place has been located in the basement of a residential building, it has not received complaints about its activities or noise generated and it has received the support of residential neighbors.

22. Trash will be collected from the proposed center twice a week.

23. The subject structure was vacant at the time the application was filed. Staff members of the Family Place and members of a church affiliated with the center have since occupied the structure to begin its renovation and for security reasons.

24. The applicant is also seeking a variance from subsection 7202.1 of the Zoning Regulations which requires six on-site parking spaces. The applicant is providing two spaces at the rear of the subject site. The extend of the

occupancy of the structure on the site precludes providing four more spaces.

25. Almost all of the proposed center's clients will walk or take public transportation to the subject site. The Family Place conducted a survey at its current location from August 22, 1985 to September 5, 1985. Of its 266 visitors, with an average of 26 visitors per day, only three of the total 266 needed a parking space. Seventy-six percent of the visitors walked to the center. The proposed location will be closer to the center's clients and will be well served by public transportation.

26. By memorandum dated September 11, 1985 the Office of Planning (OP) recommended conditional approval of the subject application. The OP reported that in terms of the major issues associated with this application, namely the location of the proposed center within the neighborhood of the clientele it serves and the lack of objectionable impacts, the subject application complies with both. The proposed community service center provides counseling, guidance, and social services to primarily hispanic clients residing in the Adams Morgan area. The proposed 16th Street location of the Family Place is reasonably necessary and convenient to this specialized neighborhood clientele.

27. The OP further reported that the possibility of objectionable noise is minimized by two factors. First, the activities of the Family Place are confined to the interior of the structure. Second, with only an occasional exception, he Family Place operates during normal business hours. During these hours many nearby residents are either at work themselves or engaged in activities for which routine noise presents few problems. However, the Office of Planning recommended the imposition of conditions limiting the Family Place's hours of operation from 9:00 to 5:30 Monday through Friday except for one evening and weekend day per month. The OP further reported that the traffic impacts are also likely to be minimal. The neighborhood orientation and economic status of the proposed center's clients results in use of mass transit by most if not all of the visitors to the Family Place. Moreover, of the seven staff members, only one commutes to work by car. Because there are two on-site parking spaces to the rear of the structure, this one car can be accommodated on-site.

28. The OP further reported that the applicant is seeking variance relief from the parking regulations because the structure occupies the greater portion of the lot. Given this condition, strict application of the regulations would result in peculiar and exceptional practical difficulties to the owner. Further, the demand for parking indicates two on-site parking spaces are sufficient thus precluding detrimental impacts upon the public good. The

Board concurs with the reasoning and recommendations of the OP.

29. The commissioner from Advisory Neighborhood Commission Single Member District (ANC-SMD 1A03) testified in favor of the subject application at the public hearing and by letter dated September 18, 1985. She stated that the program was meeting a known vital need in the city. She reported that at the SMD meeting there was no opposition to the application. The SMD-ANC reported that the absence of a letter of support from the ANC was not a reflection of disapproval but rather resulted from administrative difficulties. The Board finds that it cannot give "great weight" to the ANC's opinion without a report of the full Commission with a recommendation.

30. A letter dated September 10, 1985, was submitted to the record by Marion S. Barry Jr., Mayor of the District of Columbia, in support of the subject application. He stated that the Family Place provides an important community service in the city which is fighting to bring down the infant mortality rate. The Family Place has been honored by the city for their outstanding record of service. He further noted that many of the program's participants live in the area of the proposed site and that the move to the new location will enable the program to be of even more benefit to the surrounding neighborhood. The Family Place will strengthen the quality of family life in the area and will be a very good neighbor.

31. By letter dated September 18, 1985, Frank Smith Jr., Council member for the subject Ward 1, expressed his support for the subject application. He reported that the Family Place has been a well-respected, key agency in his ward providing services to his constituents as well as a good neighbor which has improved the quality of life in the Adams Morgan area.

32. By letters September 17, 1985 and September 18, 1985, David A. Clarke, council chairperson, and Hilda M. Mason and Betty Ann Kane, councilwomen at large, expressed their support of the subject application for reasons expressed above. They further stated that the center would not unreasonably impinge on the neighborhood residential character. It was their opinion that the center has been a good neighbor at its present location and will have just as positive and constructive of a relationship with the community at the new site.

33. By letter date September 3, 1985, the Pastor of the Shrine of the Sacred Heart church located near the subject site, expressed his support for the application. He stated that he believed that the Family Place would be of substantial benefit to the neighborhood.

34. The owner of the row house adjacent to the subject site testified in opposition to the application at the Public Hearing and by a letter submitted to the record on the grounds that the proposed center would detract from the residential character of the neighborhood. He was concerned that the location of the center will deprive him of a neighbor who could watch his house in case of fire or burglaries; the center will probably put up a large sign and that the operators of the proposed center may not be able to maintain the property. He paid 150,000 dollars for his home and he and his neighbors don't need the services of the center. This property owner further testified that the windows of his home are 12 feet from the windows of the subject structure. He will be disturbed by babies crying one Saturday a month if the center is allowed to operate on that schedule. His wife plans to become pregnant and will be staying home days so she will be disturbed by the noise generated by the center. He further testified that despite the residential character of the area, the subject site is a dangerous and unhealthy location for pregnant women and children because of the heavy traffic on 16th Street and the proximity of a halfway house for convicts.

35. The neighboring property owner further testified that he does not believe that a staff of seven will only need two parking spaces or that clients will generally walk to the subject site. Parking spaces accessed by the alley are often blocked. He already has conflicts with his neighbors over parking.

36. The property owner also stated that the applicant tried to misrepresent the site by stating on the application that it was vacant. In a visit to the Family Place at the current site, he saw 25 pre-schoolers playing. The noise was intolerable. The environment was one of a poorly managed day care facility. He saw no counseling activities.

37. The Board finds that no evidence has been submitted to indicate that the proposed center will not be a good neighbor or that it will not maintain its property. The center will not erect an obtrusive sign. The Board further finds that the center does fill a vital neighborhood need. The Board also finds that since all activities are confined to the interior of the structure, the center will not generate unreasonable noise. The Board does concur that 16th street is a heavily travelled major thoroughfare but it does not find that the center will contribute significantly to the area's noise level. The Board also does not find that the area is too dangerous or unhealthy for the center's clients who not only visit the center but also live in the area.

38. The Board does not concur with the neighboring property owner's assessment of parking needs for the center

since they were not based on a survey or observation but rather are pure speculation. The Family Place has, under oath and based on their four year of operation, defined their parking needs. The Board also notes that the OP reported to the satisfaction of the Board that traffic impacts would be minimal. The Board further finds that the neighboring property owner's conflicts with his neighbors over parking are not any more likely to intensify with the location of the center than they would if the site were occupied for normal residential use. The record shows that the site was vacant at the time of application. The applicant has stated the nature of its current occupancy in Finding No. 23 above. The Board does not find that the Family Place is a child development center but rather is a well established and recognized community center.

39. An additional neighboring property owner submitted a letter to the record in opposition to the proposed center for reasons which have been stated and addressed in Finding No. 37 and 38 above. She also stated that the establishment of the proposed center would encourage nonresidential uses to locate in the neighborhood at sites that are currently occupied by residential uses. She further stated that if the site is zoned as a community center and if The Family Place Center failed financially, the use which would replace it could be an even more undesirable use.

40. The Board finds that each application for a special exception is judged on its own merits and that the grant of this application would not set a precedent in the neighborhood. The Board further finds that the grant does not amend the zoning map. The operation of a community center at the site is limited to the subject application. An additional community center proposed for the site would have to apply for a separate special exception.

41. By petition dated September 17, 1985, numerous neighbors of the subject site expressed their opposition to the proposed center on the grounds that the immediate area in which the subject site is located contains two halfway houses and housing for the elderly and handicapped. They further stated that the center would destroy the residential character of the neighborhood. The Board finds that the location of a community center is predeemed compatible with residential uses if the center meets the criteria listed in finding NO. 6 above.

42. The applicant submitted on October 30, 1985 a motion to waive Rule 503.1 of the Supplemental Rules of Practice and Procedure which requires that a motion for a reconsideration be filed by a party within ten days of the filing and service of the written order of the Board. The applicant requested the waiver so that it could submit a motion for reconsideration of the subject application. The motion to waive the Rules was denied at the Public Meeting

of the Board on November 6, 1985 as premature since the final order for the application had not been issued. Accordingly, the motion for reconsideration could not be entertained. On November 26, 1985, the applicant submitted motions identical to those originally submitted and denied. The Board finds this second motion an idle gesture.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a special exception the granting of which requires that the proposal meet the requirements of Paragraph 3101.45 and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and the relief will not tend to affect adversely the use of neighboring property.

The Board concludes that the applicant has met its burden of proof. The proposed center will be operated by a nonprofit organization promoting the social welfare of the neighborhood in which it will be located. The center is reasonably necessary and will be convenient to the neighborhood. It offers no articles of commerce for sale. The proposed use, as conditioned below in the grant of the application is not likely to become objectionable in a Residential District because of noise or traffic.

The Board further concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The Board concludes that the applicant has met its burden of proof. The practical difficulty is inherent in the land because of its physical conditions. Because of the subject site's narrow width, 20 feet, and the structure's occupancy of a large portion of the lot, the site will not accommodate more than two parking spaces. Further, the applicant demonstrated that the required spaces are not needed by the center. The Board further concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose to the zone plan.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Two parking spaces shall be provided in the rear yard of the subject site.

2. Hours of operation shall be from 9:00 A.M. to 5:30 P.M. Monday through Friday and either one evening or one Saturday per month until 10:00 P.M.

3. The number of employees shall not exceed eight.

4. There shall be no more than thirty participants at the center at any one time.

5. Trash shall be collected at least twice a week.

6. Approval shall be for a period of TWO YEARS.

7. Approval shall be limited to operation of the center by the applicant.

VOTE: 3-0 (Maybelle T. Bennett, Charles R. Norris, William F. McIntosh to grant; Carrie L. Thornhill not voting having recused herself; Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 17 JAN 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "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 SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14327order/DON17B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14327 of Michael Salzberg, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.45 to use the subject structure as a community center building and for a variance from the parking requirements (Sub-section 7202.1) in an R-5-B District at premises 3309 16th Street, N.W., (Square 2676, Lot 469).

HEARING DATE: September 18, 1985

DECISION DATE: October 2, 1985

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 3-0 (Maybelle T. Bennett, Charles R. Norris, and William F. McIntosh to grant; Douglas J. Patton not present, not voting; Carrie L. Thornhill not voting, having recused herself).

FINAL DATE OF ORDER: January 17, 1986

ORDER

The subject application was granted by the Board subject to seven conditions. Condition No. 6 of the Board's Order, dated January 17, 1986, limited approval of the use of the building as a community center to a period of two years. On October 30, 1985, counsel for the applicant submitted a motion requesting the Board to waive Section 503.1 of the Supplemental Rules of Practice and Procedure before the BZA to permit consideration of a motion for reconsideration of one of the conditions outlined in the Board's oral decision made at its public meeting of October 2, 1985 prior to the issuance of a written decision. There was opposition to the motion to waive the Rules to accept the motion for reconsideration. The Board denied the motion to waive the rules at its public meeting of November 6, 1985.

The Board issued its written decision on the application on January 17, 1986. Counsel for the applicant filed a timely motion for reconsideration of Condition No. 6 of that order on January 29, 1986.

The applicant entered into a sales contract with the Family Place in February 1985 which required that settlement on the property take place upon receipt of the required special exception approval or in January 1986, whichever occurred first. To satisfy this contingency, the Family Place filed the subject application. The subject application was heard on September 18, 1985 and approved by the Board on October 2, 1985, subject to seven conditions. The Family Place is able to comply with all of the conditions except Condition No. 6 which limits the occupancy of the building by the Family Place to a period of two years. The applicant requests the Board to modify condition No. 6 to allow the Family Place to occupy the subject property indefinitely or, in the alternative, for a minimum of seven years.

The Family Place is a non-profit organization that has been located in the community for a substantial period of time and the majority of the center's clients live in the area. Because of the non-profit status of the organization and difficulties in obtaining resources and funding, the Family Place is of the opinion that it is unreasonable to require this type of organization to invest the substantial amount of money necessary to purchase the subject building if its use is restricted to only two years. In addition, because the Family Place provides a service to residents of the neighborhood it desires to provide a long-term, "known" location in the neighborhood in order to provide effective community services. The Family Place is willing and able to comply with all the other conditions of the Board's order regarding parking, hours of operation, and the number of staff or clients on the premises at any one time. The Family Place is therefore of the opinion that an extended period of approval will not have an adverse impact on the neighborhood.

A party in opposition to the application opposed the requested modification of Condition No. 6 on the basis that the two year limitation on the occupancy of the subject premises by the Family Place is necessary in order to insure that the facility will not be objectionable to the surrounding residents due to potentially disruptive effects caused by noise or traffic.

Upon consideration of the request for modification, the opposition thereto, and the final order, the Board concludes that the situation described by the applicant, combined with the circumstances which supported the original granting of the subject application, results in a situation in which an extension of the time period for which the proposed use was approved would not result in substantial adverse impacts on the surrounding neighborhood. However, the Board concludes that approval for an indefinite period of time or for a period of seven years would be excessive given the desire of

the Board and the neighborhood to monitor the proposed facility in order to evaluate any potential adverse effects which may result. Accordingly, it is hereby ORDERED that Condition No. 6 of the Board's order dated January 17, 1986 shall read as follows:

6. Approval shall be for a period of FIVE YEARS.

In all other respects, the order of the Board dated January 17, 1986 shall remain in full force and effect.

VOTE: 3-0 (William F. McIntosh, Maybelle T. Bennett and Charles R. Norris to approve modification; Paula Jewell not voting, not having heard the case; Carrie L. Thornhill not voting, having recused herself).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____
EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: 30 MAY 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "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 SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14327order/DON20