GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: D.C. Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: January 20, 2004

SUBJECT: Supplemental Report in response to request by the Board of Zoning Adjustment regarding: **BZA # 17100 – Jesus Is The Way Church**

This supplemental report is in response to a request from the Board, that OP provide information addressing justification for the Jesus Is The Way Church application to be considered as a Special Exception versus a Variance. The applicant proposes to add a coffee/deli component to an existing non-conforming grocery, patent medicine, and variety store. The additional services would require the preparation of hot foods and beverages on-site, and thereby constitute a restaurant use.

The C-1 Commercial District is the zone that first permits restaurants as a matter of right.

701 Uses as a Matter of right C-1

701.4, (q): the following retail establishment shall be permitted in a C-1District as a matter of right. A restaurant, not including fast food, drive-in, or food delivery service shall be permitted in the C-1 District as a matter of right.

2003 CHANGING USES WITHIN STRUCTURES

2003.5 In a residence District, the proposed use shall be a dwelling, flat, apartment house, or a neighborhood facility.

It is OP's opinion that the previous uses at the site constitute a **neighborhood facility.** OP has examined the previous use history of the property, and concluded that it has a long history of non-residential uses. There are Certificates of Occupancy, which date back to the mid 1960's that identify all of the previous uses at the property, as various retail establishments. Additionally, a previous Board, in March 1985, (BZA Application No. 14264) considered the request of John

BZA
Case No. 17100
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO. 17100
EXHIBIT NO. 31

and LaVerne Walker, for a special exception at the subject site, to change a non-conforming use from retail grocery store, patent medicine, and automatic coin laundry, to a beauty parlor. Under the **Finding Of Fact Section** of the 1985 special exception application, the Board determined that the site was a neighborhood facility. Finding (16): *The proposed use is a neighborhood facility providing personal services for the day-to-day needs of a small tributary area.* The Board ultimately approved the 1985 special exception application.

The Zoning Regulations do not define a "neighborhood facility" but due to the very small size of the building (500 square feet) and dimensions (12.5 feet by 40 feet), the lack of a second floor and no parking, the proposed deli/coffee shop could be deemed a neighborhood facility.

COMPREHENSIVE PLAN VS ZONING CONFLICT

There is a conflict on the subject block, between land use and zoning. The Comprehensive Plan Generalized Land Use Map depicts the east side of the 100 block of 15th Street, N.E., as ***Mixed Use, Moderate Density Residential/Low Density Commercial.*** A variety of uses are encouraged in mixed-use categories. However, the block is in the ***R-4 Zone District***. Restaurant uses are not permitted in restricted residential zones.

2005 DISCONTINUANCE

2005.1 Discontinuance for any reason of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a non-conforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

If the applicant can certify for the Board, (Business License, Certificate of Occupancy) that the property was in continuous operation as a non-conforming use, for the prior 3 years, then OP recommends approval of the application.

RECOMMENDATION

In the opinion of the Office of Planning, the application should be considered as a special exception under Section 2003.5 of the Zoning Regulations. The OP recommendation for approval is contingent upon the applicant documenting for the Board, that the subject property has been in continuous non-conforming use, for the three year period prior to the present applicant leasing the property. According to Pastor William S. Musgrove, Jesus Is The Way Church purchased the subject property 5 years ago, which would have been approximately 1997.

If the applicant fails to produce satisfactory proof to the Board that the property has been in continuous non-conforming use since approximately June of 1999, then OP recommends the application be **denied**, because there would exist a discontinuance of a non-conforming use.

ADDITIONAL COMMUNITY COMMENTS

OP received 3 additional telephone calls from neighbors and one from the ANC after the public hearing, all expressing opposition to the proposed coffee/deli shop. The concerns related to the potential for the proposed use attracting more crime to the neighborhood and increasing loitering in the area of the coffee/deli shop.