Testimony of Barry Kreiswirth

before the

District of Columbia
Board of Zoning Adjustment

on

Case No. 17136
Application of Africare, Inc.

March 30, 2004
9:30 a.m.

BZA
Case No. 17136
Exhibit No. 33

Board of Zoning Adjustment
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Introduction

Good morning, Chairman Griffis and members of the Board of Zoning Adjustment. I appreciate the opportunity to testify at this hearing.

My name is Barry Kreiswirth. I live on Warner Street, NW. The rowhouse I live in and own is directly across the rear alley from the Africare property which is the subject of this hearing.

As you are aware, Africare has applied to the Board for two variances — one from the lot occupancy limit and one from the rear yard setback requirement.

I am here to testify today in opposition to both variances. I do not believe that either variance should be granted unless the Board places appropriate conditions on the grants of the variances.

General Standards for Granting Variances

As you are aware, the Board has the authority to grant variances only where several conditions are met. The Board must find preliminarily that there are extraordinary or exceptional conditions related to the property and that the strict application of the zoning regulations would result in exceptional difficulties or exceptional hardship to the property owner. Assuming the Board finds that these conditions have been met in the case of Africare's application, a final condition comes into play.[1]

I will focus my testimony on this final condition — that the variance may be granted only where it can be granted "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan".

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[1]I will not raise the issue here of whether these conditions have been met. Nor will I now question whether Africare should be required for this project to seek a use variance beyond the one it earlier received.

Without the conditions I propose below, this final condition will not be met, and the variances should not be granted.

Rear Yard Setback Requirement

First, I would like to speak to the issue of the rear yard setback. I am opposed to the grant of this variance without a requirement that Africare take significant steps to shield the noise coming from its mechanical equipment.

Setbacks are meant to protect not merely the light and air of nearby properties, as the applicant has suggested, but also to protect nearby properties from the noise of neighboring uses.[2]

Because of the loud drone of Africare's current mechanical equipment, particularly the air handling unit, I am unable to fully enjoy my backyard in the spring and summer months. This noise problem will only increase with the proposed project — because either Africare will install additional equipment to cool and ventilate the building addition or the current equipment will run at a higher level or for longer periods of time.

Moreover, Africare notes in its application that the mechanical functions of the new building will be located at the rear of the building. The requested variance therefore will bring these noise-creating functions even closer to the properties to the rear of Africare, such as mine.

Therefore, if the Board grants the rear yard setback variance, the variance should be conditioned on Africare's agreement to place

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[2] See, e.g., Chico Corp. v. Delaware-Muncie Board of Zoning Appeals, 466 N.E.2d 472 (Ind. Ct. App. 2d District, 1984) ("Greater ... yard setbacks are reasonably required for fraternities than for single or two family residences or even apartments because the latter do not present the same noise, traffic and congestion problems fraternity houses present.").

significant sound shielding around — and/or move and/or enclose — both the current and any new mechanical equipment.[3]

Lot Occupancy Limit

The second variance Africare is seeking is relief from the limit on lot occupancy. The lot occupancy requirements protect both open space and the character of the zoning districts. Africare seeks to occupy a greater area of the lot than is allowed under the zoning regulations. The variance would create a significant detriment to the public good through the loss of this well-kept open space. Therefore, in order to mitigate this significant detriment, the variance (if issued) should be conditioned on a requirement that Africare better maintain and landscape the vacant parcel it owns to the east of the current building.

Africare, by choice, is seeking to build on the parcel to the west of the current building. However, Africare also owns a parcel to the east of the current building, which it has chosen to leave vacant, with no landscaping, and surrounded by a chain link fence. Africare seeks to eliminate a large amount of the well-kept open space to the west of the current building — space which is required to be open under the zoning regulations — through the grant of this variance. An appropriate condition to protect the damage to the public good that the grant of this variance would create would be for Africare to be required to landscape the vacant parcel to the east of the current building with trees and other plants, along with hardscaping features, and replace the chain link fence with a wrought-iron fence.[4]

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[3] In Board to Keough v. City of Newport [R.I.] Zoning Board, C.A. 98-150, 1999 R.I. Super. LEXIS 71 (R.I. Sup. Ct.), the Rhode Island Superior Court upheld a denial of a variance based on very similar circumstances related to noise and setback requirements.

[4] Although in the long-term I believe the public good will be better served by the appropriate development of this property, in the interim the public good would be best-served by the landscaping and re-fencing of this property.

Conclusion

In conclusion, I request that the Board grant the variances Africare has requested only if the conditions I have set forth above are incorporated into the Board's order. It is only with the conditions above that these variances can be granted "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan".

Thank your for your time and your attention to my testimony.