GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13904, of Africare, Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3104.3) to use all floors of the subject premises as "Headquarters Office of Charitable Organization" in an R-4 District at premises 440 R Street, N.W., (Square 509, Lot 805).

HEARING DATES: January 26 and March 16, 1983
DECISION DATES: April 6 and May 4, 1983

FINDINGS OF FACT:

1. The subject application was first scheduled for the public hearing of January 26, 1983. The applicant requested a continuance on the grounds that one of its principal witnesses, the Executive Director of Africare, was out of the country. There was no opposition to the request for continuance. The Chair continued the hearing to March 16, 1983.

2. The subject site is located on the south side of R Street between New Jersey Avenue to the east and Fifth Street to the west and is known as premises 440 R Street, N.W. The site is in an R-4 District.

3. The site is generally rectangular in shape and topographically level. The site is developed with a two story plus english basement red brick elementary school building, called the Morse School. The building is boarded and unoccupied. The site consists of 18,318 square feet of land area, over half of which is designed as open play space. The entire site is fenced in by an eight foot tall chain link fence.

4. Across R Street to the north are residentially occupied row dwellings and a non-conforming grocery store in the R-4 District. There are also a beauty parlor, laundry/cleaners and row dwelling in the C-2-A District on the north side of R Street. Adjacent to the subject site on its west side are three row dwellings in the R-4 District. East of the site, across a ten foot wide alley, there is a funeral parlor on the southwest corner of New Jersey Avenue and R Street in the R-4 District. There is a ten foot wide public alley which runs parallel to the southern side of the subject site which separates the site from the rear yards of row dwellings in the R-4 District.

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5. The applicant is a private, non-profit organization which was established in the District of Columbia in 1971. Africare, Inc. is supported by private organizations and individuals, by the U.S. Government, and by international agencies like the United Nations High Commission for Refugees.

6. Africare, Inc. purchased the subject site on April 14, 1982, at a public auction conducted by the District of Columbia.

7. Africare, Inc. proposes to convert the abandoned school building into an administrative and cultural complex called Africare Centre. Africare Centre would serve as the organization's international headquarters, containing office space, an African resource center and museum, a language laboratory, a computer center and a conference area with a kitchen. A landscaped park would be located outside the building. The conversion would require substantial rehabilitation of the Morse School and the grounds surrounding it.

8. A headquarters office of a charitable organization is not a permitted use in the R-4 District. A headquarters office of a charitable organization is first permitted in the SP District as a special exception and as a matter-of-right in the C-1 District. The applicant now seeks a variance from the use provisions of the R-4 District.

9. The applicant's proposed hours of operation are from 9:00 A.M. to 5:00 P.M. There will be forty employees.

10. The applicant will provide a parking lot on site with eleven parking spaces. The majority of the employees use public transportation. There is unrestricted curb parking allowed on the north side of R Street except for a loading zone in front of the aforementioned laundry/ cleaners.

11. Each of the two typical floors of the building contains four classrooms of approximately 850 square feet each and four utility spaces of approximately 150 square feet each. The remaining space is devoted to two large stairways and a central hall. The ceiling height of the two typical floors is approximately fourteen feet. The basement, one-third of the building's floor area, is predominantly below grade and has small high windows. Because of the minimal light and ventilation, most of the basement space does not meet the requirements of the D.C. Building Code for habitable residential space.

12. The building has brick bearing walls and wood joist construction. The roof is framed with wood rafters and a combination of posts and roof beams with partial trusses

bearing on the interior and perimeter walls. The interior walls thus support the floors and roof, and great costs would be involved in removing significant sections of the interior walls. The electrical, heating, and plumbing systems are obsolete or inadequate and require complete replacement in any conversion. While the principal structural components, footings, bearing walls, floor joists and roof support framing, are in sound and serviceable condition, and the building shell, the exterior brick walls, windows and roof, are in good condition, the building is merely a structural shell and requires total renovation for any use for habitation.

13. The design for the conversion of Morse School for use by Africare provides an appropriate setting for the building by converting the present deteriorated asphalt play yard to a landscaped entry forecourt with trees, shrubs, brick paths and seating areas. The landscaped garden is not fenced from the sidewalk.

14. The exterior of the building will be restored and improved by removing the plywood sheets and expanded metal screens at the windows, repairing the windows, repointing the brickwork and painting the brick and trim.

15. An eighteen foot by eighteen foot extension of the ground level stair landing will provide an appropriate entry foyer to the building. This extension, on the west side of the building, is in conformance with the yard and lot occupancy requirements of the R-4 District. This extension, the addition of skylights, and the provision of areaways on the south and east sides of the building to bring more light and ventilation to the basement areas, are the only changes to the exterior of the building.

16. A small, interior atrium will be provided to interconnect the two main floors and the new resource center. The skylights and atrium will provide the interior spaces with natural light.

17. The interior layout is designed to require minimal disturbance of bearing walls and take advantage of the ceiling height. Africare's program includes elements, such as the board room, and functional divisions which fit within the classroom areas. The offices will predominantly be organized in an open plan arrangement. Partitions will not go to the ceiling, or will be glazed from an eight-foot height to the ceiling, so that the full ceiling height can be experienced. This will result in a feeling of spaciousness for all offices, in addition to eliminating the need to drop the ceilings.

18. The basement area is in excess of Africare's present space requirements and Africare intends to rent it to other organizations until such time as Africare needs it for its own purposes.

19. The utilization of the Morse School property as proposed by Africare is an appropriate use of the property, compatible with the neighboring uses. The physical characteristics of the structure lend themselves to relatively easy conversion for Africare's projected uses without prohibitively heavy costs for structural alterations, while the structural framing system, excessive ceiling heights and the minimal light and ventilation at the basement level are severe constraints to efficient utilization for other uses permitted within the Zoning Regulations, particularly for residential uses.

20 . Many of the uses permitted in an R-4 District are not feasible for the subject building. Attempts to use the building for a permitted use would create undue hardship upon the applicant because of unique structural and other limitations of the property in light of building code requirements and renovation costs. Additionally, demolition of the present structure for entirely new construction for permitted uses would entail demolition and new construction costs prohibitively high for any reasonable investor seeking a reasonable turn.

21. The conversion of the structure to residences, in light of building code requirements and renovation costs is not feasible, involving an unreasonably high investment for the prospective unreasonably low return. Other permitted uses are likewise not feasible, thereby causing undue hardship upon the applicant. The only permitted residential use which is realistic is the conversion of the building to apartments. Because of the configuration of bearing walls, the most direct approach to the two typical floors is to convert each classroom to a one or two bedroom unit since this would not require expensive alterations of the bearing walls. Because the basement space does not have adequate light and ventilation under the D.C. Building Code, it is therefore not presently habitable. To make the basement habitable would require expensive excavation and retaining walls to lower the grade at the building face and, in addition, would require providing new and larger windows and architecturally treating the exterior wall areas newly exposed by the excavation.

22. A second alternative, of developing the maximum twenty units allowable under R-4 zoning, is theoretically possible, but would in practice not be feasible, in that the bearing walls restrict free and efficient planning of units. To develop the full twenty units would require extensive and costly restructuring of bearing walls and floor framing, in addition to the problems of utilizing the basement.

23. Certain physical characteristics of the building, such as the bearing wall construction, the excessive ceiling

heights and the depth of the basement floor, severely constrain adaptability of the building for many of the other permitted R-4 uses, such as nursing home, hospital, boarding house, rooming house, fraternity or sorority house, parking garage, or embassy. A convalescent or nursing home requires large areas on one floor for efficient staff supervision. The floor area of each floor of the Morse School is too small. For a museum or art gallery, in addition to the fact that the location is inappropriate, the large amount of window area is a detriment in that museums and galleries prefer large blank walls for display and no windows so that light can be controlled for exhibits. A chancery use is not permitted, since this use did not exist prior to September 22, 1978, as required by the Zoning Regulations.

24. The R-4 District is designed for low-to-medium density residential dwellings and designated compatible uses. The use proposed by Africare is compatible and is consistent with the intent and purpose of the Zoning Regulations. Elements of Africare's uses are identical to many of the designated compatible uses, such as gallery, community center, private club, and school. Africare's proposed use is a less intense use of the property than are many of the permitted uses such as hospital, clinic or fraternity house, and would have far less negative impact on adjacent residential uses. Africare's use of the property will make a positive contribution to the character of its immediate neighborhood environment. Besides the improvement of the building itself, the removal of the chain link fencing along the R Street frontage, and the conversion of most of the asphalt play area to a landscaped garden-entry to the building will result in a positive impact on the neighborhood.

25. The applicant's real estate witness testified that there would be no reasonable return to an owner under any of the uses permitted in a R-4 District. For residential use, it would be impossible to convert Morse School into housing at rents that are competitive for the property and area. Equally, it would be impossible to convert Morse into condominium units or cooperative units and sell them at prices that are justified for the space available in that subsidized housing is not a possibility because no subsidies are available. Consequently, it would be an undue hardship to require an owner to use the building for this type of use; such a use is not viable economically. The Board so finds.

26. As to row dwellings, the real estate witness testified it would cost a minimum of $50,000 to demolish Morse School. If the site were clear, nine small row dwellings could be built upon it. Each row house should be approximately 1400 square feet, and the construction costs would be approximately $45 a square foot. Therefore, the construction costs of each row dwelling would be $63,000. Sales,

advertising, marketing and profit would bring the cost of each home to $83,790. In addition, the cost of the property plus demolition increases the cost to $95,000. This is more than anyone would pay for a row house in that area. The Board so finds.

27. Uses permitted in an R-4 District, as a matter-of-right, include residential care homes for youth, community residence facilities, community houses, clinics, art galleries or museums, and private schools. Permitted uses which require Board approval include child development centers, emergency shelters, rehabilitation homes, and community service centers including day care centers and consumer operatives. The real estate witness testified that, just as with residential uses, it would be an undue hardship for an owner to develop a residential facility for youth, for drug abusers, or a residential health care facility. The primary reason, however, the permitted public or nonprofit uses are not possible for an owner is that they do not provide a sufficient income. For example, it would be inexpensive to convert Morse School to a shelter for homeless men, as has been done with Pierce School and Blair School. However, Pierce and Blair Schools are owned by the Government of the District of Columbia, and the government provides the income to operate the shelters. Morse is owned by Africare, a private nonprofit organization, and has no expectation of receiving government grants for the renovation and operating costs of Morse School. The Board so finds.

28. The applicant argued that there are a number of factors which should be considered in determining what impact the proposed use by Africare would have on the community. They include: the expressed support of the neighborhood for the conversion; the availability of an owner who will put the new use into effect; the increased investment in the neighborhood and the many benefits that thereby follow; the hours of operation; the traffic and location of public transportation; and the availability of off-street parking. The proposed use by Africare will not have a substantial adverse impact, but rather will have a positive one including ridding the neighborhood of an obsolete, dilapidated building.

29. The Office of Planning, by memorandum dated January 17, 1983, recommended that the application be denied. The Office of Planning reported that the list of permitted uses in the R-4 District included church, community based residential facility (health care facility) hospital, clinic for humans, private school, community center, college, center, college, university, private club, fraternity or sorority house, museum, or art gallery, and various dwelling types including conversion to an apartment house provided that there is 900 square feet of lot area per apartment or

bachelor apartment. The Office of Planning was of the opinion that the applicant had not demonstrated that the property cannot be used in accordance with the R-4 District use provisions. Such a finding is the primary test in a use variance application. The Office of Planning did not believe that the operational characteristics of Africare as proposed would be objectionable to the neighborhood. However, the Office of Planning was of the opinion that the application, if granted would not be consistent with the purpose and intent of the Zoning Map, and the designed purpose of the R-4 District, which is for low to medium density residential dwellings and designated compatible uses as established by the Zoning Commission in 1958 and as amended to date. The Office of Planning recognized the meritorious work performed by the Africare organization.

30. In a post-hearing supplemental memorandum, dated March 23, 1983, the Office of Planning reported that it had reviewed the record in the matter, including testimony given at the hearing. The Office of Planning noted that there are important benefits to be derived from approval of this application in view of its special merit, from a practical civic, educational, cultural and social planning view. As stated in its original report, the Office of Planning was in general concert with the Shaw citizenry in the feeling that the proposed facility could become a role model and source of pride for a community. The Office of Planning recommended that the original recommendation of denial be amended to conditional approval in view of the overriding and convincing testimony by the applicant and community. The Office of Planning recommended that, if the Board approved this application, it establish conditions including non-transferrable use of the site by Africare, how Africare will be available to the community, and provision that the parking lot be secured after work hours.

31. In a second supplemental memorandum, dated April 1, 1983, the Office of Planning reported that on March 31, 1983, the Office of Planning met with the applicant to discuss the amended recommendation of approval conditioned to the non-transferrable use of the site by Africare. The applicant indicated that this condition would place an extreme hardship on the organization's ability to secure financing through a lending institution which needs as collateral the ability to sell the property to a similar office user. It was not the intent of the Office of Planning to recommend approval in such a way as to hinder the applicant's ability to renovate the property. The Office of Planning finally recommended that the condition which read "non-transferrable use of the site by Africare," be changed to read "any potential transfers met the same conditions which Africare has met in its request for the

variance". The Board does not concur in the final recommendations of the Office of Planning. It is not possible to impose a requirement for other organizations to meet the same conditions as Africare. Such a test is too vague for the Zoning Administrator to apply. The Board concurs with the Office of Planning that the applicant has met its burden, and will impose appropriate conditions on its approval.

32. The Shaw Project Area Committee (PAC), by letter dated March 7, 1983, reported that it wholeheartedly supported the requested zoning variance of Africare, Inc. The Shaw PAC welcomed the movement of Africare's Headquarters from Connecticut Avenue to the center city. The renovation of Morse Elementary School into an administrative, cultural and community center housing Africare facilities will provide the Shaw community with a number of important and tangible benefits. The establishment of Africare's new offices in Shaw represents the introduction of an important Black and internationally oriented institution into the Shaw neighborhood. This will help stimulate the kind of cultural renaissance needed in Shaw. The Center will beautify the neighborhood, transforming a long time eye sore into an attractive property. Further, the Shaw community will benefit from the community uses for which the center will be available. The Africare Center will allow the community to use, free of charge, a number of meeting rooms for organization and educational meetings. The Library and Resource Center will house informative materials on Africare. Audiovisual equipment and materials in the center will be available to the community. It was for these reasons that the Shaw PAC supported Africare in its efforts to convert its property into a new Africare Center.

33. Advisory Neighborhood Commission 2C, by letter of December 28, 1982, advised that the ANC supported the application. The ANC reported that it had reviewed the organization's purpose and plans and had met with the organization's representatives. The ANC was of the opinion that the organization would have a positive impact on the local community.

34. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board concurs as to the issue of impact. The ANC did not address the further zoning matters of grounds on which to grant a use variance.

35. A resident owner at 448 R Street, by letter dated March 15, 1983, opposed, in general, the application. The owner was concerned that part of the structure might be used as living or feeding quarters for individuals such as street people. Concern was also expressed about available parking

in front of the structure for the area residents. The location is now posted precluding parking during school hours. Thirdly, concern was expressed that the applicant even prior to any renovation keep the area around the structure clean and free of vagrants and loiterers.

36. There was no opposition to the application. Many letters in support of the application were submitted to the record. Petitions of support were also filed.

37. The Board, at its public meeting of April 6, 1983, granted the application SUBJECT to the following CONDITIONS:

a. Use of the subject building shall be limited to the offices of Africare, except as noted below.

b. Up to fifteen percent of the gross floor area of the building may be used as offices of other non-profit organizations.

c. The parking lot shall be secured by a chain, cable or gate during all hours the facility is not in operation.

d. The applicant shall engage in a program of services to the District of Columbia community as set forth in the Narrative Statement accompanying the application, marked as Exhibit No. 7 of the record, and as set forth in the statement of the Right Reverend John T. Walker, Chairman of the Africare Board of Directors, marked as Exhibit No. 40 of the record.

38. By letter of April 15, 1983, the applicant requested the Board to eliminate or modify conditions "a" and "b" of its decision. The applicant argued in its brief that condition "a" would frustrate its efforts to finance the large rehabilitation costs of approximately one million dollars and that such a condition has been held by the Courts to violate constitutional and statutory requirements in other jurisdictions where it had been composed by zoning boards and then overturned by the Courts. As to condition "b" the applicant argued that it restricted the applicant's ability to rent, in the interim, that part of the building reserved for the future staff and program growth. The condition restricting the applicant to renting only fifteen percent of the building would frustrate the applicant's ability to rent that space which constitutes at least thirty percent of the usable area.

39. At the public meeting of May 4, 1983, the Board reconsidered its previous decision to grant. The Board modified in part, as stated below, the conditions of the prior grant.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant seeks a variance from the use provisions which requires a showing of an undue hardship upon the owner of the property caused by an exceptional or extraordinary condition inherent in the property itself. The Board concludes that there is such hardship both inherent in the property as well as extraneous to the property. First, the building on the property was erected in 1883 and while the shell is quite sturdy, and expensive to demolish, the interior is typical of that era with high ceilings and divisions which are not economically feasible for transition to an apartment house, other residential use or any of the other permitted uses. Also, the location of the property in the midst of mixed commercial and residential uses, where some of the houses are abandoned, would pose a hardship on the property owner to develop the property for permitted uses which would be economically feasible. The Board concludes that the structure is not reasonably suitable or amenable to conversion to residential living or any other uses permitted in an R-4 District.

The subject property has been abandoned for five years and the applicant's proposed use in the Board's opinion, will not only remove the current dangerous, unwanted, eyesore, but also will have a positive impact upon the community by opening the doors of Africare Centre and sharing the rich cultural resources and contacts it seeks with the community. The applicant has provided substantial evidence that the property cannot be reasonably used for any purpose for which it is presently zoned. The applicant has received great support from the community, that would welcome the revitalization of the abandoned and boarded-up school, The Board concludes that relief can be granted without substantial detriment to the public good. The Board further concludes that the use variance may be granted without substantially impairing the intent, purpose and integrity of the zoning regulations.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. It is well established that the Board does have authority to impose reasonable conditions upon the granting of an application for the protection of surrounding or adjoining property.

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

a. Use of the subject building shall be limited to the offices of Africare or other non-profit organizations.

b. The parking lot shall be secured by a chain, cable or gate during all hours the facility is not in operation.

VOTE TO RECONSIDER: 4-1 (Carrie Thornhill, Maybelle T. Bennett, William F. McIntosh and Charles R. Norris to GRANT Reconsideration; Douglas J. Patton Opposed by PROXY

VOTE TO GRANT APPLICATION: 4-1 (Carrie Thornhill, Maybelle T. Bennett, William F. McIntosh and Charles R. Norris to GRANT; Douglas J. Patton Opposed by PROXY).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: SEP 27 1983

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.

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