

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14852 of the Associated Catholic Charities of the Archdiocese of Washington, Inc., pursuant to 11 DCMR 3108.1 for a special exception under Sub-section 217.7 to establish a community residence facility for 38 residents in the basement and second floor in an R-1-B District at premises 2800 Otis Street, N.E. (Parcels 167/64, 167/65, 167/67, and 167/68 in Squares 4302, 4303, 4304, and 4305).

HEARING DATE: July 20, 1988
DECISION DATE: September 7, 1988

FINDINGS OF FACT:

1. The property is located on the north side of Otis Street between 26th Street and 30th Place and is known as premises 2800 Otis Street, N.E. It is zoned R-1-B.

2. The lot area of the site is approximately fifteen acres. The site extends the total depth of the block from Otis Street to Randolph Street.

3. The property is improved with a two-story plus basement brick building which was constructed in approximately 1927 as an orphanage. In 1960, Certificate of Occupancy No. B-26019 was issued to allow the use of all floors of the structure as a home for dependent boys under the then existing category of Eleemosynary Institution. In 1970, Certificate of Occupancy No. B-66991 was issued to allow the use of part of the first floor as a day nursery and affiliated welfare services. The building is currently occupied by a convent for the Sisters of the Order of Missionaries of Charity on the first floor and the Gift of Peace Center on the basement and second floor levels.

4. The Gift of Peace Center originally occupied the building under the auspices of Certificate of Occupancy of No. B-26019 for an Eleemosynary Institution. By Order No. 14568, dated April 20, 1988, the Board reversed the decision of the Zoning Administrator that the Gift of Peace Center was permitted under Certificate of Occupancy No. B-26019. Accordingly, the applicant is now seeking special exception relief to establish a community residence facility for thirty-eight residents at the subject premises.

5. The existing structure contains approximately 32,600 square feet of floor area and is in good condition.

The applicant does not propose any exterior alteration or addition to the premises.

6. The proposed community residence facility will provide shelter for up to thirty-eight terminally ill men, women and children, including patients diagnosed as having Acquired Immunodeficiency Syndrome (AIDS). Separate quarters will be provided for the men, women and children.

7. The existing structure is located on a hill and is separated from the nearest adjacent residence by approximately 420 feet.

8. The applicant was incorporated in the District of Columbia on March 3, 1975, as a non-profit, non-stock corporation whose purpose is to operate exclusively for charitable, educational, humanitarian and other related purposes. It has tax exempt status recognized by the Federal Internal Revenue Service and the District of Columbia. The Gift of Peace Center is supported entirely by private contributions and donations.

9. Six Sisters are assigned to the Gift of Peace Center. They will provide the daily primary care, support and assistance to residents. A support staff of trained volunteers will assist the Sisters on a daily basis. While the Community Residential Facility will operate on a continuous 24-hour schedule, formal visiting hours are limited to 5:30 p.m. to 7:00 p.m. daily, except Thursdays, when there are no visiting hours.

10. There are in excess of fifty screened parking spaces on site. Primary access to the property is from Otis Street. There is an additional driveway at the rear of the property, accessible from Eastern Avenue, which is available for special deliveries and emergency vehicle access but which is not open for routine traffic.

11. The majority of the residents of the facility are destitute and homeless and do not own automobiles. The Sisters do not own or operate automobiles except that the applicant uses a van for pick-up and delivery of groceries, donations, etc.

12. The applicant testified that volunteers and visitors park approximately six vehicles per day at the subject site. One step-van, which is not affiliated with the Gift of Peace Center, is parked on the property over night for security reasons.

13. Phillip Pierce, M.D., Assistant Professor, Georgetown University Medical Center, Department of Medicine, Division of Infectious Diseases and Director of

the AIDS Clinic, appeared on behalf of the Applicant as a physician involved with the Gift of Peace Center and as an expert witness concerning the Acquired Immunodeficiency Syndrome (AIDS) epidemic. Dr. Pierce has been involved with the Gift of Peace Center since August 1986 because Georgetown University Medical Center provides the medical support to the Gift of Peace Center, primarily on an out-patient basis.

14. Dr. Pierce testified that AIDS is not spread by casual contact and that the nature of the AIDS virus is such that the operation of the Community Residential Facility should not have any adverse impact on the physical health of any area or community, neighbor or citizen.

15. Georgetown University Medical Center supervises the removal of all trash from the property. Georgetown's environmental engineer supervises the placement of the trash in impermeable cardboard cartons which are sealed and picked up by a private contractor for delivery to an incinerator.

16. Georgetown University Medical Center often serves as an initial contact for prospective residents. Residents who are referred are terminally ill, mostly homeless and have AIDS. Most of the residents are referred from regional hospitals, and the present waiting list has five persons. Most referrals are simply unable to care for themselves, and those on the waiting list remain hospitalized until a space becomes open. Nursing homes rarely place AIDS patients because most are indigent, and the nursing homes lack the space. Shelters for the homeless in the District do not meet the same needs as the Gift of Peace Center because shelters force users to leave the facilities during the day time and wander the downtown streets and suburbs until the shelters reopen for the night. The applicant does not propose to operate a shelter for the homeless, pursuant to 11 DCMR 219 at the subject premises.

17. Dr. Pierce was of the opinion that the property is uniquely suited to accommodate the proposed 38 residents because of its size and space, its quiet, isolated setting, the quality of and individual care given by the Sisters and the "home" environment, such that program goals and objectives of the District cannot be achieved by a facility of smaller size at the subject location, and that there is no other reasonable alternative to meet the program needs of that area of the District.

18. Dr. Pierce stated that he, or one of his associates, visits the Gift of Peace Center on a weekly basis. Regular medical problems or crises are dealt with outside the Gift of Peace Center at the referring institutions, such as Howard University, George Washington University and D.C. General Hospitals. There are no medical routines at the Gift of Peace Center.

19. Since the opening of the facility in November 1986, 59 individuals with AIDS have been admitted, with a maximum of 15 AIDS residents living at the Gift of Peace Center at any one time. Five individuals with AIDS remain on the waiting list, and telephone inquiries continue to come in regularly.

20. Forty-two individuals have died while residing at the Gift of Peace Center. A death at the Gift of Peace Center is treated similarly to a death in any residential home where a funeral establishment arranges transport and burial of the deceased.

21. Applicant testified that it will comply with code and licensing requirements when it has received zoning approval to operate as a community residence facility.

22. A. Janelle Goetcheus, M.D., appeared on behalf of Applicant. As Medical Director of the Health Care for the Homeless Project, Founder and Director of Christ House and various other community service organizations, Dr. Goetcheus is very familiar with the health care needs of the terminally ill homeless and destitute in the District of Columbia. She stated that no other program in the District provides the same care and services that are available at the Gift of Peace. Dr. Goetcheus visits the center on a weekly basis to assess the non-AIDS individuals residing at Gift of Peace. She reiterated and corroborated much of Dr. Pierce's testimony and stated that the Gift of Peace provides a much needed facility that is not likely to affect adversely the surrounding neighborhood.

23. Dr. Reed Tuckson, Commissioner of Public Health for the District of Columbia, appeared in support of the application. He testified that the District of Columbia ranks fifth in the nation in the number of AIDS residents, and that 737 known deaths have occurred in the District from AIDS-related illnesses. He further testified that the District lacks the resources and facilities to provide care for those who are homeless, destitute and terminally ill, and that the Gift of Peace is an extraordinary opportunity for the City. Dr. Tuckson testified that no spaces are available at other facilities in the area and that the 38 spaces at the Gift of Peace are much needed, especially as the current crises grows more urgent in the near future and the demand for care increases. Dr. Tuckson also testified that the operation of the facility would have no adverse impact on the neighborhood as the AIDS virus would not impose a health danger to neighbors. Dr. Tuckson also stated that the Applicant met the requirements under Sub-section 217.7.

24. The Office of Planning, by memorandum dated July 13, 1988, and by testimony presented at the hearing,

recommended that the application be approved on the grounds that the Applicant has met its burden of proof under Section 217 of the Zoning Regulations. OP was of the opinion that the proposed facility would not have a deleterious impact on the neighborhood; that the Gift of Peace Center is in the center of a large tract of property, well separated and screened from the surrounding residential community; and that the site provides adequate parking. OP indicated that there are no other community-based residential facilities in the subject square or within 1,000 feet of the property. OP was of the opinion that the proposed facility would not have an adverse impact on the neighborhood because of any excessive traffic, noise, operations or other similar circumstances. OP further noted that the need for facilities and programs like the Gift of Peace has become paramount, and that approval of the application is consistent with the goals and objectives of the Comprehensive Plan, the Human Services Element (Title X), Section 1007 and 1008.

25. Advisory Neighborhood Commission 5A, by letter dated July 19, 1988 and by representative at the public hearing, opposed the granting of the requested special exception. The letter from the ANC was received into the record but is not entitled to "great weight" because it does not meet the criteria set forth in 11 DCMR 3307.

26. Several neighborhood residents testified in support of the application at the public hearing. The support was generally based on the following:

- a. The use of the facility on a twenty-four hour basis has improved security in the area.
- b. The traffic and noise generated by the existing facility represent a substantial decrease from that associated with prior use of the structure for a day care center and administrative offices.
- c. The maintenance of the premises has been improved.

27. The record contains several letters and a petition of forty-one signatures in support of the facility. Harry L. Thomas, Councilmember Ward 5, by letter dated July 12, 1988 and by testimony of his aide at the public hearing, supported the application based on the great need for the critical care provided by such a facility in the area.

28. The record contains several letters in opposition to the application. Several neighborhood residents and ANC 5A Commissioners appeared as individuals in opposition to the application and based their opposition on the following:

- a. The operation of the facility posed a health hazard to the neighborhood.

- b. The facility was operating in violation of D.C. zoning and licensing regulations.
- c. There was no finding that of the program was needed in the area.
- d. Federal legislation concerning the Gift of Peace proposed by Senator Mark Hatfield should table the application until Congress has acted.
- e. A smaller facility could meet the goals and objectives of the District.

28. In addressing the issues and concerns expressed by the opposition, the Board finds as follows:

- a. The Board is persuaded by the testimony offered by the applicant's expert witnesses and the Public Health Commissioner that the operation of the facility will not pose a health hazard to the neighborhood nor adversely affect the neighborhood in terms of noise, traffic or operations.
- b. The applicant is properly seeking the necessary zoning relief to operate a community residence facility pursuant to 11 DCMR 217.7. Actual compliance with licensing requirements falls under the aegis of the D.C Department of Consumer and Regulatory Affairs. No evidence was presented to show that the applicant would be unable to meet applicable code and licensing requirements.
- c. The Board is persuaded that the program goals and objectives of the District cannot be achieved by a facility of a smaller size at the subject location, and that there is no other reasonable alternative to meet the program needs of that area and the District.
- d. The Board concurs with the Office of Planning's report and testimony that there is no other community-based residential facility in the same square or within a radius of 1,000 feet from the subject property.
- e. The Board concludes that this application is properly before it for consideration notwithstanding any possible action by Congress, and the Motion to Table the application was, therefore, properly denied.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires substantial compliance with the requirements of Section 3108.1 and Subsection 217.7 to establish a community residence facility for 38 individuals. The Board concludes that the Applicant has so complied. There is adequate screened on-site parking. The facility will meet all applicable code and licensing requirements. The number of residents and the nature of their health conditions are not likely to adversely affect the neighborhood because of noise, traffic or operations. There are no similar facilities in the same square or within a 1,000 foot radius of the property, and the District's program goals and objectives cannot be achieved by a facility of a smaller size at the subject location and there is no other reasonable alternative to meet those program needs of that area and the District.

The Board further concludes that the application can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that the relief sought will not tend to adversely affect the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 5-0 (Charles R. Norris, Paula L. Jewell, William F. McIntosh and Carrie L. Thornhill to grant; Lindsley Williams to grant by proxy).

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 7 1989

UNDER 11 DCMR 3103.1 "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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14852

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated FEB 7 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
Executive Director

DATE: FEB 7 1989

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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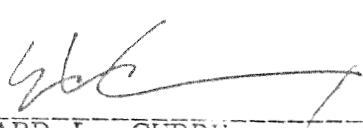
As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated FEB 7 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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DATE: FEB 7 1989