

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY

JUNE 12, 2001

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The Public Meeting convened in Room 220 South,  
441 4th Street, N.W., Washington, D.C. 20001, pursuant to  
notice at 8:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
SUSAN MORGAN HINTON	Board Member

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning  
Paul O. Hart, Office of Zoning  
John K. A. Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

P-R-O-C-E-E-D-I-N-G-S

(8:45 a.m.)

CHAIRPERSON REID: Good morning. This is the June 12 public meeting of the Board of Zoning Adjustment.

MR. HART: Good morning, Madame Chair, members of the Board. We have one case for this public meeting. It's the Application 16657 of the Christian Praise Church. Pursuant to 11 DCMR 3104.1 for a special exception under Section 205, to establish a child development center for 20 children, ages 2-1/2 to five years old and five children five to eight years old, and six staff in an R-1-B District at premises 3626 Alabama Avenue, S.E., Square 5668, Lot 34.

The hearing date of this case was January 9, 2001. The decision dates were March 6, 2001, May 8 and June 5, 2001.

Christian Praise Church filed an application with the Board of Zoning Adjustment on October 20, 2000 pursuant to 11 DCMR 3104.1 for a special exception under 11 DCMR 205 to allow the following to become child care center PTBC and its president, Mr. Aaron M. Brooks to use church annex property as a child development center.

The subject property is located at 3626 Alabama Avenue, S.E., Square 5668, Lot 34 in R-1-5-B Zone District. The application was accompanied by a letter from the zone administrator dated August 8, 2000, certifying the need for the

1 required relief. Christian Praise Church and PTBC are  
2 represented in these proceedings by the American University  
3 Washington College of Law, Community and Economic Development  
4 Law Clinic.

5 After hearing the case, the Board granted the  
6 application for a term of one year subject to conditions.  
7 Since three members of the Board were not present or heard this  
8 case at the time the written final decision order was to be  
9 issued, the Board afforded the parties to the case the  
10 opportunity under Section 1509(D) of the District of Columbia  
11 Administrative Procedures Act to file written exceptions and  
12 arguments with the Board concerning the proposed decision  
13 order.

14 The Board directed that any written memoranda  
15 containing exceptions and arguments be filed with the Board no  
16 later than the close of business on Friday, May 25, 2001. The  
17 Board also directed that prior to or at the time of filing a  
18 memorandum, the filing party must serve all the other parties  
19 in this case with a copy of their memorandum. No reply or  
20 response to memorandum would be accepted, and the Board would  
21 not hold oral arguments on the exceptions and arguments.

22 Pursuant to D.C. Code Section 1-1509, subsection  
23 D, parties, may designate any portion of the exclusive record;  
24 that is, the file transcript and zoning regulations, to which  
25 they wish to call the Board's attention, but they may not

1 introduce new evidence in connection with their exceptions or  
2 arguments. The Board would review the proposed decision order  
3 and any exceptions and arguments at the regular public meeting  
4 on Tuesday, June 5, 2001, and would take action to issue a  
5 final decision and order at the time.

6 The transcript of the hearing on the application  
7 and the proposed orders were sent to each participating member.

8 The original participating members with a vote of three to  
9 zero to two were Ms. Sheila Cross Reid, Mr. Robert Sockwell,  
10 and Ms. Carol J. Mitten to approve. Ms Anne Renshaw not  
11 present, not voting, and the third appointee not participate in  
12 the case, not voting. Participating Board members, Ms.  
13 Sheila Cross Reid, Ms. Anne Renshaw, Susan Hinton, and Ms.  
14 Carol J. Mitten, Mr. Geoffrey H. Griffis not voting, not having  
15 participated.

16 At the June 5, 2001 public meeting, the Board  
17 members, having reviewed the proposed decision order and  
18 submitted exceptions in the arguments, voted as follows. Ms.  
19 Mitten moved and Ms. Renshaw seconded approval of the order as  
20 it was written with a one year term. Ms. Sheila Cross Reid and  
21 Ms. Susan Morgan Hinton voted in opposition to the order as  
22 written. The motion failed for a lack of a majority.

23 The vote was Ms. Carol J. Mitten and Ms. Anne  
24 Renshaw to approve, Ms. Sheila Cross Reid and Ms. Susan Morgan  
25 Hinton to deny, Mr. Geoffrey Griffis not present, not voting.

1 The Board decided to ask Mr. Griffis to read the record and to  
2 participate in a special public meeting on June 12, 2001 at  
3 8:30.

4 That's the case, Madame Chair.

5 CHAIRPERSON REID: Thank you, Mr. Hart. All  
6 right, members, this matter is open for discussion. Mr.  
7 Griffis, have you have the opportunity to read the record?

8 MEMBER GRIFFIS: Yes, Madame Chair, I've read the  
9 record.

10 CHAIRPERSON REID: Okay. Ms. Hinton?

11 MEMBER HINTON: Could I recommend, Madame Chair,  
12 that we just hear from Mr. Griffis, because the other four  
13 Board members all made it clear what our positions were.

14 MEMBER GRIFFIS: A wonderful way to start the  
15 morning. Thank you much.

16 I did take great deliberation in reading through  
17 the file, and I thought there were strong cases on each side.  
18 Let me just start quickly with the main issue that gives me my  
19 most concern, Madame Chair, and that would be the time limit  
20 that was brought up during the hearing from Chairman Sockwell.

21 I think that, obviously, the Board was feeling that this may  
22 not have been the strongest application before them, and look  
23 to this as a remedy to solve and move the case on.

24 My concern is that the precedent that it might  
25 set in terms of putting a time limit on this action, not to

1 mention the burden it would bring on the applicant. However, I  
2 did not feel -- well, I took to great heart the opposition the  
3 other facilities in the neighborhood, the fact that this is  
4 originally a single family house, but I also looked at the  
5 strong application that was put in in terms of parking plan, in  
6 terms of landscaping that came in also.

7 To that, I would I guess just to finish quickly,  
8 and then I will follow up, if there are questions or other  
9 discussions. That's my thinking at this point. I believe that  
10 we possibly should entertain a motion that approved this  
11 application and go for discussion in that. I would take away,  
12 in fact, the time requirement on the application.

13 CHAIRPERSON REID: Okay, Mr. Griffis. Are we  
14 understanding you to say that you would put no time limit at  
15 all?

16 MEMBER GRIFFIS: That would be correct.

17 CHAIRPERSON REID: Okay. I think that I  
18 understand your point of view and certainly you've demonstrated  
19 that you have read the record which had very strong arguments  
20 in opposition and in support. I think that at this juncture,  
21 we have to look at several things.

22 One is the fact that we did have opposition. We  
23 have had child development centers which typically, it's like  
24 between five and ten years -- Ms. Hinton, if you remember.

25 MEMBER HINTON: I can remember all different

1 periods of time.

2 CHAIRPERSON REID: Was there one for 15?

3 MEMBER HINTON: Five, 15.

4 CHAIRPERSON REID: Yes.

5 MEMBER HINTON: I can remember, yes, I'm sure.

6 CHAIRPERSON REID: Depending on the situation,  
7 because of the fact that unlike other applications, when you  
8 are dealing with children and the impact all decisions have on  
9 their stability, when there are schools and children, then you  
10 have to also factor in how is it going to affect them with  
11 regards to any kind of bureaucratic decision that we make.  
12 Look at the interests of the children.

13 My thought here was that one year was not  
14 adequate enough because one year was not adequate enough  
15 because it didn't give the applicant an opportunity to be able  
16 to really have a chance to demonstrate what they were going to  
17 do there. It's also unfair that the opposition was basing  
18 their assertions on a previous center.

19 This particular applicant had taken great strides  
20 to mitigate any adverse impact with parking and traffic. I  
21 think that because of the fact there was opposition, typically  
22 the Board would look at perhaps putting some kind of time limit  
23 on it. I had recommended five years as being the least because  
24 of my concern of the fact that while the applicant had made to  
25 me a very good case, just due to the outside chance that there

1 was some type of adverse impact, at least it would not be  
2 perpetual. It would not be unending. So, my recommendation  
3 was for the five year period of time.

4 MEMBER HINTON: Madame Chair, I would like to  
5 make a motion at this point that we approve the applicant for a  
6 five year time period. I agree with you, that this property is  
7 located in an area where there are a number of other child  
8 development centers and other kinds of uses that if not  
9 operated within conditions set by the Board, could cause  
10 adverse impact. That's one of the reasons, I think, that the  
11 Board likes to see these periodically in order to get some  
12 input from the community as to whether the facility is being  
13 run within the conditions that have been set and whether there  
14 are, in fact, impacts that the Board had not anticipated.

15 I think that the one year time period is just too  
16 short to establish any sort of track record. So, I would move  
17 that it's a five year period that the Board take a look at the  
18 facility again and give the neighbors and the community an  
19 opportunity to speak about what impacts there may be at that  
20 time.

21 CHAIRPERSON REID: I would second it.

22 VICE CHAIRPERSON RENSHAW: Discussion.

23 CHAIRPERSON REID: Discussion.

24 VICE CHAIRPERSON RENSHAW: I took the time over  
25 the weekend to re-read the material, and I was struck in re-

1 reading the transcript and the back-up material, the memorandum  
2 in support of the Christian Praise application, how necessary  
3 it is to have a short time period. This is a well meaning  
4 endeavor, but it is a first endeavor, said Mr. Brooks, the  
5 first time trying to run any type of child care facility out of  
6 that residence. That's on page 138 of the transcript.

7 I know that what has been proposed to the BZA and  
8 to the community is very well meaning, but the parking contract  
9 has yet to be tried. Those extended hours bother me  
10 tremendously, especially on Friday and Saturday from 8:00 a.m.  
11 to 12 midnight. That brought opposition from the community.  
12 It is such an -- oh, and also the alley use.

13 That's such an extended period that that day care  
14 center is open. We have yet to know the impact of this  
15 facility on the community, and I think five years is much too  
16 long to have the community wait for any kind of redress if  
17 there is a problem. Again, well meaning words before the  
18 Board. We have yet to see a track record.

19 We don't know whether or not this parking  
20 contract and the extended hours are going to work, and I would  
21 urge the Board to cut back on its too generous time period of  
22 five years in consideration of the community opposition, and  
23 pull it back to a more reasonable time period where the  
24 community could then come back before the Board and say it's  
25 wonderful. Please approve it for a ten year period, or there

1 are serious problems, and we thank you for allowing us this  
2 quick turn-around time to address these problems.

3 CHAIRPERSON REID: What's more reasonable?

4 VICE CHAIRPERSON RENSHAW: I was in support at  
5 our last meeting of a one year period, and I still feel very  
6 strongly about this. I could not go beyond two in  
7 consideration of the community

8 CHAIRPERSON REID: Ms. Mitten?

9 COMMISSIONER MITTEN: I agree with what Ms.  
10 Renshaw has said, and I don't want repeat. You know, we've  
11 all, I think, aired our opinions, you know, at length. What I  
12 took away from our deliberation the last time is that there's a  
13 difference of opinion among the Board members about where the  
14 emphasis is to be placed regarding adverse impacts.

15 I think the concern that Ms. Renshaw and I share  
16 is the concern for the immediate neighbors and the chair and  
17 Ms. Hinton have a concern about the broader adverse impacts to  
18 the community at large, whether that's in the immediate  
19 neighborhood or elsewhere, people who would use the facility.  
20 I just want to put on the record what our charge is for special  
21 exceptions, and this is from Section 3104.1, which is "those  
22 special exceptions will be in harmony with the general purpose  
23 and intent of the zoning regulations and zoning maps and will  
24 not tend to affect adversely the use of neighboring property."  
25

1                   That's why my emphasis has been on the  
2 neighboring property. I think the adverse impacts there need  
3 to have the highest priority. Thank you.

4                   CHAIRPERSON REID: And your position in regard to  
5 the -- are you basically standing on your previous position?

6                   COMMISSIONER MITTEN: I mean, if there were some  
7 compromise to two years, I would be in favor of that. I can't  
8 support five years, and the shorter the time frame the better.

9                   If we could get to two years, I would, given the alternative,  
10 I'd be more than satisfied.

11                   CHAIRPERSON REID: I think that what we have to  
12 be very cautious about is that also contained within our  
13 regulations is the aspect of the regulations facilitating the  
14 health, safety, and welfare of the community and the  
15 neighborhood, and I think that what we have to look at is in  
16 this particular -- every neighborhood is different. Every  
17 neighborhood has special problems, and it troubles me that we  
18 have a situation where there is a waiting list for child care  
19 services in this community, which means then that -- translates  
20 into the fact that there are people who are waiting to work who  
21 can't find jobs, can't take jobs because they have nowhere to  
22 put their children.

23                   The fact that joblessness really usually  
24 contributes to other factors that make a community unstable,  
25 like violence, crime, prostitution, drugs and the like, if in

1 some small way this particular child care center only --  
2 there's only 30 kids that they are going to be taking in --  
3 would be able to avert some of the more broader problems in the  
4 community by providing a vehicle by which people would be able  
5 to have the opportunity to take jobs and be able to work. I  
6 think that would contribute to the facility of the neighborhood  
7 and the health, safety, and welfare.

8 Dr. King said that the answer to crime was jobs,  
9 and in a situation where this particular center is particularly  
10 I have a concern about is because it's providing an unusual and  
11 unique opportunity for people to be able to take jobs in the  
12 evening and on the weekend, jobs that are made available to  
13 particularly people who welfare to work or ex-offenders or  
14 people who are coming out of drug rehab who have to have a job  
15 and can't take them because there's no child care available to  
16 them in the evening or -- this is only on Wednesday or on  
17 Saturday and only until 12:00.

18 Now, a couple of years ago, this Board was very  
19 happy to approve an application for a 24-hour child care center  
20 that was presented by Peoples Involvement Corporation, PIC, on  
21 Georgia Avenue. There was some concern about the intensity of  
22 use, but nonetheless, the greater concern was the fact that  
23 quite a few more people were able to work and take on these  
24 jobs that they couldn't otherwise be able to take on.

25 So, I think that we have to think in terms of

1 there are societal problems that we are faced with, and what we  
2 as a Board are charged to do, as far as our decisions are  
3 concerned and use our authority in such a way that's going to  
4 be in the best interests of all people concerns. So, I would  
5 definitely stand with that five year term.

6 Mr. Griffis?

7 MEMBER GRIFFIS: Thank you. My reading of the  
8 case, I think that none of the Board members actually dispute  
9 what the need for facilities and uses like this, but I think it  
10 does come down to the fact of whether that necessarily mandates  
11 this particular site and, in fact, whether the zoning ordinance  
12 then covers that in terms of determining provisions on this  
13 site.

14 Looking at that, and also knowing somewhat about  
15 the regulations and the licensing of day cares, they will be  
16 going through annual reviews as part of staying open for  
17 business. If we are discussing only a time limit or a time  
18 requirement on this, I would tend to support a two year. I  
19 believe that one year is such a quick turn-around in terms of  
20 getting up and starting, and that two years would give them  
21 ample time to open, to organize, and then to have the community  
22 come back to respond.

23 I feel that fairly strongly because of the fact,  
24 and I know it's been discussed, but that there was a similar  
25 use that had problems. Now, of course, it's a different

1 operator at this point, but I think the issues that are similar  
2 with the day care still remain. Provisions have been made, and  
3 I think they are great, but the testing of which and the  
4 compliance with has not been tested.

5 COMMISSIONER MITTEN: Madame Chair, I would move  
6 an amendment to the motion that has been made. The amendment  
7 that I would like to see is that the five year term be amended  
8 to two years.

9 CHAIRPERSON REID: Discussion, Ms. Hinton?

10 VICE CHAIRPERSON RENSHAW: Do we need a second  
11 for the amendment?

12 CHAIRPERSON REID: Yes.

13 VICE CHAIRPERSON RENSHAW: I second.

14 CHAIRPERSON REID: Discussion.

15 MEMBER HINTON: I would be in favor of that  
16 amendment, and basically for two reasons that have been talked  
17 about this morning. I agree with what Mr. Griffis said, so I  
18 won't repeat it. Also, because this facility is asking for  
19 very extended hours and because it is in a residential  
20 neighborhood, there is potential to be very disruptive if it's  
21 not operated within the conditions that the Board has  
22 established. The only way that we will know is after it is  
23 operated, to see whether these applicants do as they have told  
24 us they will do.

25 Whether they've operated ten other facilities or

1 no others before, it's still going to come down to how they  
2 operate this facility in this location. I think two years is  
3 enough time to get them set up and let them establish a track  
4 record of how responsible they will be and whether they will be  
5 a good neighbor or not.

6 CHAIRPERSON REID: I'm still concerned about  
7 setting a precedent. I think that all daycare centers  
8 typically when they come before us, it's not uncommon that it  
9 is in a residential area. Two, that they will have some  
10 opposition. All daycare centers usually are for the first  
11 time, and if we start to now put a time limit on daycare  
12 centers for only two years, that would be a signal that that's  
13 the only time limit that daycares can have.

14 I think that I would compromise to a three year.

15 I think that in the sense of reasonableness, I think still  
16 that two years is still not enough time as far as being able to  
17 comply with the regulations. That does not change from any  
18 other daycare center that has to also demonstrate that they  
19 comply with the regulations. We have had daycare centers  
20 before that were in residential areas that had some opposition.

21 That does not mean that they necessarily will not  
22 comply, and I think that it still puts a burden on them for  
23 only two years to have to come back when heretofore we've given  
24 daycare centers a time limit to terms of five and ten and 15  
25 years. I still think that's an unfair burden.

1 VICE CHAIRPERSON RENSHAW: I would call the  
2 question, Madame Chair.

3 MEMBER HINTON: So, the motion is to grant the  
4 application for a term of two years with all of the conditions  
5 that were listed?

6 COMMISSIONER MITTEN: Well, actually, what we  
7 would vote on first would be amending the main motion to  
8 include a two year term. We vote the amendment up or down.  
9 Then if the amendment is voted in, then we vote the main  
10 motion, which will have been modified to be a two year term.  
11 It's a two vote process.

12 MEMBER HINTON: Okay.

13 CHAIRPERSON REID: All right, now. Say that  
14 again?

15 COMMISSIONER MITTEN: There's an -- I moved an  
16 amendment to the main motion. First we have to vote the  
17 amendment up or down, and then the main motion will either have  
18 a term of five years or two years, depending on what happens  
19 with the amendment.

20 CHAIRPERSON REID: Okay. Let's work with the  
21 amendment.

22 COMMISSIONER MITTEN: All right.

23 CHAIRPERSON REID: Now, your amendment was for  
24 two years.

25 COMMISSIONER MITTEN: To amend the main motion to

1 have a two year term instead of five.

2 CHAIRPERSON REID: Okay.

3 VICE CHAIRPERSON RENSHAW: And it's been  
4 seconded.

5 CHAIRPERSON REID: Okay. All in favor.

6 (Chorus of ayes.)

7 CHAIRPERSON REID: No.

8 COMMISSIONER MITTEN: Now the main motion has  
9 been amended to approve the daycare center for a term of two  
10 years. Now we need to vote that.

11 MEMBER HINTON: Madame Chair, could we record the  
12 vote on the motion to these amendments?

13 CHAIRPERSON REID: First of all, I don't  
14 understand why we're doing it like this. I'm real confused  
15 about this. If, in fact, there's a motion on the floor for two  
16 years, that's the motion.

17 COMMISSIONER MITTEN: There is now a motion on  
18 the floor for two years.

19 CHAIRPERSON REID: Oh, I see. Okay, now I got  
20 it. The amendment was -- right.

21 MEMBER HINTON: Madame Chair, could staff record  
22 the vote so we'll have a clear record in the transcript?

23 MR. HART: Okay. Staff will record the vote on  
24 the amended motion to approve two years instead of five years  
25 with a list of conditions as four to zero to one. The motion

1 was made by Ms. Mitten and seconded by Ms. Renshaw, and opposed  
2 by Ms. Reid.

3 COMMISSIONER MITTEN: I think that the vote was  
4 four to one to zero, and the vote was to amend the motion to  
5 include a two year term instead of a five year term, and now  
6 we're going to vote on the --

7 MR. HART: Sure.

8 COMMISSIONER MITTEN: Okay.

9 CHAIRPERSON REID: Okay. Now, the motion --

10 COMMISSIONER MITTEN: Would you like me to --

11 CHAIRPERSON REID: Yes.

12 COMMISSIONER MITTEN: Okay.

13 CHAIRPERSON REID: It's your motion, isn't it?

14 COMMISSIONER MITTEN: No, it's actually an  
15 amended motion that Ms Hinton made, but to prove the -- you  
16 want her to repeat it or no?

17 CHAIRPERSON REID: Go ahead, whoever wants to  
18 make it.

19 COMMISSIONER MITTEN: All right, to approve the  
20 application of Christian Praise Church for a child development  
21 center with the conditions that had been otherwise included in  
22 the order for a term of two years, is the motion.

23 VICE CHAIRPERSON RENSHAW: And that's been  
24 seconded.

25 COMMISSIONER MITTEN: Yes, we just need to vote.

1 CHAIRPERSON REID: Right. All in favor?

2 (Chorus of ayes.)

3 CHAIRPERSON REID: Abstain.

4 MR. HART: Okay. The staff would record the vote  
5 to approve the application of the Christian Praise Church for a  
6 term of two years. Mrs. Mitten made the motion. Ms. Renshaw  
7 seconded, and Ms. Sheila Cross Reid abstained.

8 MEMBER GRIFFIS: Madame Chair, I have a quick  
9 clarification question. I know that there was discussion, and  
10 I frankly don't recall when the time period was to begin on  
11 this. I know there was talk about whether it would be with the  
12 order.

13 MEMBER HINTON: I think the time period begins  
14 with when they pull the certificate of occupancy.

15 MEMBER GRIFFIS: Okay.

16 MEMBER HINTON: And I think we didn't record that  
17 vote exactly correctly. That was my motion, seconded by Ms.  
18 Reid.

19 COMMISSIONER MITTEN: As amended.

20 MEMBER HINTON: As amended.

21 CHAIRPERSON REID: Which motion was second by Ms.  
22 Reid?

23 VICE CHAIRPERSON RENSHAW: You had seconded the  
24 five year.

25 CHAIRPERSON REID: Oh, yes, the first one. Okay.

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VICE CHAIRPERSON RENSHAW: And it was amended.

CHAIRPERSON REID: Right.

VICE CHAIRPERSON RENSHAW: But it still remains.

CHAIRPERSON REID: Right, I just wanted to clarify it.

VICE CHAIRPERSON RENSHAW: The main motion.

MEMBER HINTON: Okay, that's it.

CHAIRPERSON REID: All right. That then would conclude this morning's public meeting. Thank you.

(Whereupon, the above-entitled matter was concluded at 9:14 a.m.)

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