

	<p style="text-align: center;">ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA <i>CATHEDRAL HEIGHTS • CLEVELAND PARK</i> <i>MASSACHUSETTS AVENUE HEIGHTS</i> <i>MCLEAN GARDENS • WOODLEY PARK</i></p>
<p>Single Member District Commissioners 01-Lee Brian Reba; 02- Gwendolyn Bole; 03-David Valdez 04- Vacant; 05- Margaret Siegel; 06-Carl Roller 07- Victor Silveira; 08-Catherine May; 09-Nancy MacWood</p>	<p style="text-align: right;">3601 Connecticut Avenue, NW Suite L-06 Washington, DC 20008 Website http://www.anc3c.org Email all@anc3c.org</p>

ANC 3C Resolution No. 2015-043
Regarding DDOT Public Space Application (#113460) for Parking
Spaces for Embassy Church, located at 3855 Massachusetts Avenue NW

WHEREAS the Owner of 3855 Massachusetts Ave NW, also known as Embassy Church, has filed for a Public Space permit to locate several parking spaces on its property within the public space set-back, as well as in front of its property in the area known as Hamilton Circle, a planned Circle, as detailed in the DC TOPS PS Application #113460.

WHEREAS, the area known as Hamilton Circle, located in the intersection of Mass Ave, Idaho Ave and 39th St NW, is a major intersection, with several neighboring properties, including two R5 residential buildings, two Churches, and two R2 housing districts. With all properties bordering Hamilton Circle respecting the public space set-back, locating their parking within the proper set-back regulations, except for the owners residing at 3855 Massachusetts Avenue, NW, which has a private driveway and private parking spaces located within such public space, without having received any public review to date.

WHEREAS, the entirety of Hamilton Circle is located within two ANC districts, ANC3B and ANC3C, with the property at 3855 Massachusetts Avenue NW, being located within the boundaries of the ANC3C, and adjacent to the boundaries of the ANC3B.

WHEREAS, the property at 3855 Massachusetts Avenue NW and neighboring public space has 30 existing parking spaces, as detailed in the application, with no documentation available detailing the permit history for said parking spaces.

WHEREAS, the AN3C finds that

- a) of the 30 parking spaces, 13 are located on the private space of the property (albeit within the public space set-back, aka building restriction area in front of the Church, a zoning violation),
- b) 17 of those parking spaces are located on the public space of Hamilton Circle, outside the perimeter of the property, as observed in the DC Zoning Atlas, with no record of having paid rent for public space ever, and
- c) a driveway servicing the parking area with no permit records as well.

WHEREAS, neither the 17 parking spaces on public space, nor the 13 parking spaces within the public parking space of the property, nor the driveway servicing these parking spaces have ever been subject to proper public review by the ANC3C to date.

WHEREAS, the owner of the property has a history of operating without the proper regulatory permits, and has been the subject of several ANC3C Resolutions, including Resolution 2015-005, regarding its improper use of the space on and abutting Hamilton Circle.

WHEREAS, the ANC3C, via its SMD-07 Commissioner, has received from all immediate property neighbors to 3855 Massachusetts Avenue, NW, detailed accounts of negative impact on the peace and order of the neighborhood by the residents of the property (evidenced in BZA Appeal 18827), child activities associated with the child development center (that was permitted without a special exception) and its de-facto playground (also installed and operated without a special exception), all users of the current un-permitted driveway and parking at 3855 Massachusetts Avenue, NW.

NOW THEREFORE, BE IT RESOLVED that ANC3C is of the opinion that the public space of Hamilton Circle should be respected by all neighboring properties.

BE IT RESOLVED, that ANC3C finds that the 17 parking spaces on Public Space are not a part of the character of the neighborhood, with such parking spaces considered a nuisance that decreases public space use by the residents, hereby improperly appropriating a part of public space for private use, without any prior public review whatsoever.

BE IT RESOLVED, the ANC3C supports preserving the integrity of the public space of Hamilton Circle, and objects transforming this green public space into a private parking lot. Whereas, Hamilton Circle is a major planned landmark of our City, that should be preserved, protected, and should not be developed as a private parking lot.

BE IT RESOLVED, the ANC3C opposes the Public Space Application #113460, and objects to any placement of public or private parking within the public space of Hamilton Circle, or any other property abutting Hamilton Circle. Specifically, the ANC3C objects to the 17 parking spaces on the public space of Hamilton Circle, on the grounds that any implicit temporary permit to use said public space should be revoked (the fact that the property enjoyed free parking on public space in the past, does not mean that such use should continue). The ANC3C objects to the permanent alteration of Hamilton Circle with parking spaces, because Hamilton Circle should remain a part of the Park System of Washington, DC.

BE IT RESOLVED the ANC3C objects to the 13 parking spaces located in front of the property located within the public space setback, which is a violation of Zoning Rules (Title 11 DCMR §2116.4 and others), and requests the Zoning Administrator to review the 13 parking spaces located within the Church Property for compliance with the Zoning Regulations. Specifically, the number of parking spaces should be reduced to no more than 3 parking spaces (per Title 11 DCMR §2116.3), unless the owner files and receives a special exception.

FURTHERMORE, BE IT RESOLVED, that given the lack of prior public review of the driveway servicing 3855 Massachusetts Avenue, NW, the ANC3C requests DDOT PS the opportunity to review

the configuration and placement of the driveway after the issue of the parking on the property has been addressed, with the view of minimizing the adverse impact of the private driveway of this property owner on the public space of Hamilton Circle.

BE IT FURTHER RESOLVED that the Chair and the Commissioner for SMD 3C07 are authorized to represent the commission on this matter.

Attested by



Carl Roller
Chair, on November 16, 2015

This resolution was approved by a voice vote, on November 16, 2015 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present.

	<p align="center">ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK MASSACHUSETTS AVENUE HEIGHTS MCLEAN GARDENS • WOODLEY PARK</p>
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ANC 3C Resolution 2014-027

Regarding BZA Appeal #18827 of Dr. Joan Kinlan of a Zoning Administrator Decision to Allow, Among Other Things, the Operation of a Child Development Center and a Religious/Clerical Residence for over 15 Persons without the Necessary Special Exception Approval

Whereas, Embassy Church, owner (“Owner”) of the property located at 3855 Massachusetts Avenue, NW (the “Subject Property”), has caused the Subject Property to be used for certain operations which are not matter-of-right uses in the subject R-1-B zone district, and which require special exception approval from the Board of Zoning Adjustment, among them a child development center and a housing

program with significantly more than fifteen (15) residents. It is not known whether the housing program is related to specific religious activities (in requires a special exception), nor whether it contains any local focus, or whether it is purely residential (in which case it requires a variance); and

Whereas, the Child Development Center (the “CDC”) is operated by an entity that calls itself the St. Albans Early Childhood Development Center and is not associated with the Embassy Church; and

Whereas, the Zoning Administrator, Matthew LeGrant, issued a letter dated May 16, 2014, to Lerch, Early & Brewer, LLP, in which he states that the use of the Subject Property for a “child care facility” is permitted as a matter-of-right, and does not require special exception approval, because he deems the CDC use to be a mere continuation of a previous charter school use on the Subject Property; and

Whereas, the previous use was the Washington Latin Public Charter School, grades 5 through 7, which opened in 2006 and moved at the end of the 2008 school year; and

Whereas, the CDC ostensibly operates without a special exception because the Zoning Administrator has deemed a child development center as a continuing public middle school use and thus, approved the issuance of Certificate of Occupancy #C01002760, which authorizes the use of the Subject Property as a child development center for 88 children, with a total occupancy load of 88 and no mention of the number of CDC staff; and

Whereas, the Zoning Administrator’s decision to allow the use of the Subject Property, in the R-1-B zone, as a child development center, is clearly in violation of the use provisions of the Zoning Regulations, as child development centers are only permitted as a matter-of-right in the R-1-B under certain conditions, none of which are present in this case (and none of which the Zoning Administrator has cited as justification for his decision) and there is no continuing child development center use; and

Whereas, none of the other uses which take place on the Subject Property, including the religious/clerical residence, church use, or residential use, have a certificate of occupancy authorizing such uses, which is a clear violation of 11 DCMR 3203.I, which provides generally that all uses other than one-family dwellings must have a certificate of occupancy; and

Whereas, in order to secure a certificate of occupancy for the apparent use of an apartment by persons other than the Embassy Church pastor and his family and for the use of the building for residences of at least 30 persons a special exception is required, even if it can be demonstrated that the use is for a religious denomination or a church program that promotes the social welfare of the community; and

Whereas, the immediate neighbors, including but not limited to the adjacent neighbor to the Subject Property, Dr. Joan Evelyn Kinlan, of 3843 Massachusetts Avenue, NW, are significantly adversely impacted by the operation of the CDC and the multiple

residences, in addition to other actions of the Owner, and has therefore filed an appeal (BZA Appeal #18827) (the "Appeal") of the Zoning Administrator's decisions noted in his May 16, 2014 letter; and

Whereas, the Zoning Administrator's claim that a matter-of-right use (public school) may be converted to a non-matter-of-right use (child development center) without the required special exception approval, negatively impacts the immediate neighbors, and presents a precedent which will have far-reaching negative impact not only on her and other District residents, but also on the integrity of the Zoning Regulations; and

Whereas, the Zoning Administrator did not address and apparently has not investigated whether there is a church apartment that is rented to someone other than the Pastor, as an accessory apartment, without a special exception; and

Whereas, the Zoning Administrator's claim that 30 youth may live at the church at any one time without a special exception has negatively impacted the immediate neighbors, and presents a precedent which will have negative impact not only on her and other District residents, but also on the integrity of the Zoning Regulations:

BE IT RESOLVED that Advisory Neighborhood Commission ("ANC") 3C finds that child development center use by the Owner on the Subject Property is not permitted as a matter-of-right and would only be permitted by grant of special exception approval by the Board of Zoning Adjustment, Ch. 11, Sec. 205; and

Be It Resolved that ANC 3C finds that religious/clerical residence use for over fifteen (15) persons on the Subject Property is also not permitted as a matter-of-right and is only permitted by grant of special exception approval by the Board of Zoning Adjustment, Ch. 11, Sec. 215/ 216; and

Be It Resolved that ANC 3C finds that the Appeal appropriately and persuasively challenges the Zoning Administrator's decisions regarding the uses described above taking place on the Subject Property, and should therefore be granted by the Board of Zoning Adjustment; and

Be It Resolved that ANC 3C strongly encourages the BZA to grant Appeal No. 18827 and to require that the Owner discontinue the child development center use, the religious/clerical use, and the additional family dwelling use, unless and until the Owner obtains special exception or variance approval from the BZA for such uses; and

Be It Further Resolved, that the ANC3C Chair, the ANC3C-07 Commissioner, or their designees are authorized to represent the commission on this matter.

Attested by



Carl Roller
Chair, on July 21, 2014

This resolution was approved by roll call vote of 7-1 on July 21, 2014 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 8 commissioners) was present.

	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK MASSACHUSETTS AVENUE HEIGHTS MCLEAN GARDENS • WOODLEY PARK
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ANC 3C Resolution 2014-026

Regarding the Use of Public Space by the Embassy Church Property Owner Without Permission from the District or Rent Payments from that Owner to the District

Whereas, Embassy Church, owner (“Owner”) of the property located at 3855 Massachusetts Avenue, NW (the “Subject Property”), in addition to operating a child development center and an alleged religious/clerical residence without the necessary BZA approvals, has also caused the use of public space without permission from the District Department of Transportation, as described herein; and

Whereas, Owner stated in its application for a fence permit that a fence to be constructed in public space by or on behalf of Owner would replace an already existing fence notwithstanding that there had never been a fence located in the area where the fence was constructed; and

Whereas, Owner constructed or caused to be constructed a playground in the area enclosed by the fence without having first obtained the required public space and other necessary permits; and

Whereas, Owner has operated or caused the operation of various uses in the public space adjacent to its property, including Christmas tree sales and a farmer’s market, all apparently without permission from DDOT; and

Whereas, this ANC3C is concerned with the allegations that Owner may have collected payments for the use of public space adjacent to the property, for profit, without permits; and

Whereas, the adjacent neighbor to the Subject Property, Dr. Joan Evelyn Kinlan, has contacted DDOT, but has received no substantive response from DDOT about any possible enforcement of the illegal use of public space noted above:

Now, Therefore:

Be It Resolved that the ANC 3C urges DDOT to enforce its regulations and cause all uses without permission to cease on the public space adjacent to the Owner's property; and

Be it Resolved that the ANC3C is concerned with the allegations that third parties may have paid Owner for the use of the public space adjacent to the property, and urges the City to investigate this matter; and

Be it Resolved that the ANC3C request DDOT Public Space and any other involved agency the courtesy of providing an update to the ANC3C regarding their findings and actions taken; and

Be It Further Resolved, that the ANC3C Chair, the ANC3C-07 Commissioner, and or their designees are authorized to represent the commission on this matter.

Attested by



Carl Roller

Chair, on July 21, 2014

This resolution was approved by roll call vote of 7-0 with one abstention on July 21, 2014 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 8 commissioners) was present.

ANC 3C Resolution No. 2015-004

Regarding a Request for Enforcement to be Made to the Zoning Administrator to Halt the Child Development Center Use and Multi-family

Housing Use at Embassy Church; 3855 Massachusetts Avenue NW

Whereas, Embassy Church (“Owner”), owner of the property located at 3855 Massachusetts Avenue, NW (the “Subject Property”), has caused the Subject Property to be used for a child development center (“CDC”) for up to eighty-eight (88) children, and also uses the Subject Property, among other uses, as housing for at least three (3) families;

Whereas, the CDC use is not permitted as a matter-of-right and is only permitted by special exception approval of the Board of Zoning Adjustment (“BZA”), and Owner has never applied for nor received such special exception approval;

Whereas such special exception requires notice to the ANC, which triggers its right to participate and the opportunity for ANC views to be given great weight by the Board of Zoning Adjustment and the process failure denied the ANC its right to represent the community on this matter;

Whereas, the CDC operates pursuant to Certificate of Occupancy #CO1002760 (the “C of O”), which purports to authorize the use of the Subject Property as a child development center for 88 children, with a total occupancy load of 88 and no mention of the number of CDC staff;

Whereas, Ms. Joan Kinlan, neighbor to 3855 Massachusetts Avenue, NW, appealed the Zoning Administrator’s decision to allow the CDC to operate in BZA Appeal No. 18827, during which the Zoning Administrator offered no defense on the substantive issue of the CDC use requiring a special exception, but instead filed a Motion to Dismiss for Failure to Timely File, which the Board granted;

Whereas, in the BZA Appeal decision meeting, the BZA commented that it likely would have granted the appeal but for the untimely filing because the CDC use is not permitted as a matter of right;

Whereas, pursuant to District of Columbia Court of Appeals case law involving nonconforming and illegal uses, a certificate of occupancy for an illegal use may be revoked by the Zoning Administrator at any time, regardless of the passage of time; therefore, where the BZA believed it was restricted in its ability to entertain the appeal on procedural grounds, the Zoning Administrator has no such restriction against revoking the C of O and requiring the CDC to pursue special exception approval, respecting the appropriate ANC review;

Whereas, The D.C. Court of Appeals has ruled that “[i]ssuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the applicable Construction Codes, Zoning Regulations or other laws or regulations of the District.” *Gorgone v. D.C. BZA* 973 A.2d 692 (D.C., 2009), citing *Kuri Brothers, Inc. v. D.C. BZA*, 891 A.2d 241 (D.C., 2006) and in *Krui Brothers*, the Court also ruled that “[i]f the C of O were construed to authorize such a use without the required special exception, it would have been invalid and subject to revocation as having been issued in error.” *Kuri*, footnote 6;

Whereas, the Court of Appeals has also ruled that “[a] certificate of occupancy is an “enforcement tool” that is used by administrative officers “to check proposed uses, as well as proposed structures, against the [applicable] ordinances.” *Gorgone*, citing *American Law of Zoning* §1.03[4][d], 1-54 (5th ed.

2008) (a CO “construed to authorize ... a use” that is not permitted by the zoning laws is “invalid and subject to revocation as having been issued in error”);

Whereas, based on the above case law, the Zoning Administrator clearly has the authority and the obligation to require the CDC to obtain special exception approval if it wishes to continue operating, or to revoke the C of O if no special exception is applied for and approved;

Whereas, at the BZA appeal hearing, the Owner admitted that in addition to the thirty (30) youth living in Embassy Church, there were three families, with children, also residing within the Embassy Church building, despite the fact that the Owner had apparently previously represented to the Zoning Administrator that only one family resided in the building;

Whereas, in his letter dated May 16, 2014, the Zoning Administrator stated that just one family could reside in a church, but only if it was the family of the “pastor or minister” of the church:

Therefore Be It Resolved, therefore, that ANC 3C requests the Zoning Administrator (i) to revoke the CDC C of O pursuant to the case law noted above, if the CDC does not apply for special exception relief by March 31, 2015; and (ii) to institute the appropriate enforcement action for the Owner’s illegally housing three families within Embassy Church;

Be It Further Resolved, that the ANC3C Chair, the ANC3C-07 Commissioner, and or their designees are authorized to represent the commission on this matter.

Attested by



Catherine May
Vice-Chair, on January 20, 2015

This resolution was approved by a voice vote of 5-0, with one abstention on January 20, 2015 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 8 commissioners) was present.

ANC 3C Resolution No. 2015-005

Regarding DDOT Public Space Use of the Future Hamilton Circle by Embassy Church, 3855 Massachusetts Avenue NW

Whereas Embassy Church ("Property") located at 3855 Massachusetts Ave NW currently occupies a portion of the Public Space located in front of the Church for its private parking and driveway; and

Whereas the area in front of the Property adjoins the intersection of Mass Ave, Idaho Ave & 39th St NW, and is part of the planned, but not constructed, Hamilton Circle. This public space circle area is bordered by Annunciation Church, two apartments buildings, two residential corners, and Embassy Church. All the properties on the Circle respect the public space set-back, except for Embassy Church, that uses a portion of this public space for its private parking lot and driveway; and

Whereas the ANC3C considered the public space uses by the Property that were not approved and permitted with its ANC3C Resolution 2014-026, attached. In this Resolution, the ANC Resolved to urge DDOT to enforce its regulations and cause all uses without permission to cease on the public space adjacent to the Property:

Now Therefore, the ANC3C requests the DC Public Space Office to inspect the public space in front of the Property, specifically the area known as Hamilton Circle, for any violations of public space, and to take the appropriate measures to return any privately occupied land to the public space. This should include the removal of private driveways and parking lots from the DC Public Space, with the view to restore the integrity of the public space of Washington, DC; and

Be it also Resolved that the ANC3C also request DDOT Public Space Office and any other involved agency the courtesy of providing an update within 60 days to the ANC3C regarding their findings and actions taken; and

Be It Further Resolved, that the ANC3C Chair, the ANC3C-07 Commissioner, and or their designees are authorized to represent the commission on this matter.

Attested by

A handwritten signature in black ink, appearing to read "Catherine May". The signature is written in a cursive, flowing style.

Catherine May

Vice-Chair, on January 20, 2015

This resolution was approved by a roll call vote of 5-0, with one abstention, on January 20, 2015 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 8 commissioners) was present.