

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17726 of Wisconsin Avenue Baptist Church**, pursuant to 11 DCMR § 3104.1 for special exceptions to allow construction of an addition to an existing church building, the operation therein of two child development centers under § 205, and a private school under § 206, in the R-1-B district at premises 3920 Alton Place, N.W. (Square 1779, Lot 824), as well as a reconfiguration of the parking lot on the property serving such uses.<sup>1</sup>

**HEARING DATES:** March 11, 2008, June 10, 2008, and June 17, 2008  
**DECISION DATES:** July 29, 2008, September 9, 2008, September 23, 2008,  
February 17, 2009 and March 24, 2009

**DECISION AND ORDER**

This self-certified application was submitted on September 5, 2007 by the Wisconsin Avenue Baptist Church (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The application was amended and re-submitted on January 14, 2008. Exhibit No. 24. The amended application requests special exception relief to allow the operation of two child development centers and a private school within the church building, located at address 3920 Alton Place, N.W., as well as associated special exception relief to permit construction of an addition to the church building, and enlargement and reconfiguration of the parking lot on the subject property in order to better serve the three special exception uses and the church itself.

The Board of Zoning Adjustment (“BZA” or “Board”) held a public hearing on the application on March 11, 2008, June 10, 2008, and June 17, 2008, and set a decision date of July 29, 2008, keeping the record open for certain requested submissions. Before the July 29<sup>th</sup> decision date,

---

<sup>1</sup>The caption here reflects the final relief that the Board determined was necessary for this application. The application was originally advertised only for special exception relief to allow the two child development centers and the private school. The relief requested was then amended to include the construction of an addition to the church building. As the addition needed no zoning relief independent of the fact that it would be “used” by the uses for which special exceptions had been requested, it was unclear whether separate relief for the addition itself was necessary. In the final analysis, however, the Board included the building addition in its motion to grant/deny the requested relief. Transcript of September 23, 2008 decision meeting, at 161-162. Because both special exception uses require that either “sufficient” (11 DCMR § 205) or “ample” (11 DCMR § 206) on-site parking be provided, among other parking/traffic-related requirements, the relief for the reconfiguration of the parking lot was also deliberated upon and granted by the Board, and so has here been added to the caption.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 2**

the Board received a number of informative submissions from the Applicant, the Advisory Neighborhood Commission (“ANC”) 3F, and the opposing party. The day before the decision meeting, *i.e.*, on July 28<sup>th</sup>, the Board received from the opposing party a request to reopen the record, citing new information which had been learned of only after the date for submissions – July 24<sup>th</sup> – had passed. Exhibit No. 78. The opposition party claimed that at least three programs were operating from the subject church, of which the Board had not been made aware, but which changed the intensity of use of the subject property.

The Board decided to re-open the record to accept the opposing party’s new information and, in order to have sufficient time to address the issue it highlighted, the Board set a new decision date of September 9, 2008. On September 9<sup>th</sup>, the Board continued its decision to a slightly later date, September 23, 2008, in order to allow the members sufficient time to prepare to properly deliberate the myriad aspects of this application.

At its September 23, 2008 decision meeting, the Board decided to partially grant and partially deny the application by a vote of 5-0-0. The Board decided to grant zoning relief to permit construction of the addition to the existing church building. The Board approved the operation of the Caterpillar Preschool<sup>2</sup> and the Washington Conservatory of Music, as well as the enlargement and reconfiguration of the parking lot, but denied the operation of the CommuniKids child development center. The Board, however, was lacking a site plan depicting the proposed parking lot and landscaping revisions, and therefore kept the record open for the Applicant to submit such a plan.

In order to craft a parking lot and landscaping plan which satisfied the Applicant, the neighborhood, and the Board, there ensued renewed negotiations between the Applicant and ANC 3F. Attached to Exhibit No. 84 are a letter from the ANC to the Applicant detailing recommendations for the new parking lot/landscaping, and the Applicant’s response. In the latter, the Applicant explains that it cannot construct the addition as planned due to the loss of CommuniKids, and that, therefore, it plans to retain the existing building. It further explains, however, that the Applicant will proceed to construct a new parking lot, including a new curb cut on Yuma Street in order to improve traffic circulation.

On November 25, 2008, the Applicant therefore filed not only a new site plan, as was requested, but also other documents making several new requests of the Board. The denial of the CommuniKids child development center, along with the recent serious downturn in the nation’s economy, negatively affected the Applicant’s financial ability to construct the requested addition, prompting the Applicant to file the new documents with the Board requesting three things: (1) that the Board accept an interim parking plan, to remain until the addition was constructed, and a final plan to exist after that construction, (2) an extension of time within

---

<sup>2</sup>Throughout the proceedings in this case, the Caterpillar Preschool, a child development center for zoning purposes, was primarily referred to as the “Caterpillar Co-op,” but the Applicant requested that it be referred to as the “Caterpillar Preschool” in the final order, hence its appellation herein as “Caterpillar Preschool.” *See*, Exhibit No. 83, First Attachment, and Transcript of March 24, 2009 decision meeting, at 85.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 3**

which to construct the addition of up to seven years, and (3) that the Caterpillar Preschool hours be extended until 6:00 p.m., as opposed to 12:45 p.m. Exhibit No. 83.

The Applicant's November 25<sup>th</sup> filings provoked detailed responses in opposition by both ANC 3F and the opposing party, the latter of whose response also posed many questions concerning the Applicant's new requests. Exhibits Nos. 84 and 85.

At this point, the Board had before it the Applicant's parking and landscape plan, as well as the Applicant's new requests and the responses thereto. Because the Applicant's new requests arose out of the Board's September 23, 2008 decision, and because the Board needed to address these requests and the other parties' opposition to both these and the parking plan, the Board decided to hold a further decision meeting on the application, which was scheduled for February 17, 2009.

At the February 17, 2009 decision meeting, the Board re-opened the record to accept all the post-decision filings and decided it would consider the Applicant's new requests. The Board asked for further information and set a final decision date of March 24, 2009.

On March 24, 2009, by a vote of 4-0-1, the Board decided the three new issues presented to it by the Applicant. The Board granted the requests to extend the hours of the Preschool and to implement two parking plans, one on an interim basis, and one on a final basis after construction of the addition. The Board, however, denied the request for extension of time within which to construct the addition, based on the rationale that this order, permitting such construction, will be valid for two years (11 DCMR § 3130.1), and before the expiration of that two-year period, the Applicant is free to come back to the Board to request an extension of the validity of the order pursuant to 11 DCMR § 3130.6.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated September 7, 2007, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Departments of Health and Transportation, ANC 3F, the ANC within which the subject property is situated, the Single Member District member for 3F06, and the Council Member for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*, and on January 4, 2008, sent such notice to the Applicant, ANC 3F, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 3F was automatically a party to this application. A group of neighborhood families was collectively granted opposition party status as one party called "Families Neighboring Wisconsin Avenue Baptist Church." The members of the opposition party actively participated in these proceedings, preparing submissions and testifying before the Board. In their Pre-hearing Statement, they state that they do not object to the application if

**BZA APPLICATION NO. 17726**  
**PAGE NO. 4**

certain conditions are included into any order granting it. During the hearing, however, the representative of the opposition party made clear that the party actually *opposed* the application, (*See*, Transcript of June 17, 2008 hearing, at 446, lines 1-4) but had proffered certain conditions in the event the application was granted notwithstanding their opposition.

Applicant's Case. The Applicant put on a thorough case at the hearing, with detailed testimony from a representative of each of the requested special exception uses. The pastor of the Wisconsin Avenue Baptist Church also testified as to facts concerning, among other things, the church, the proposed addition, the special exception uses, and the reconfiguration of the parking lot. The Applicant's case also included testimony by two experts – the traffic consultant who prepared the “Traffic and Parking Summary” for the Applicant, and the architect who designed the addition and new parking lot lay-out.

Government Reports. The Office of Planning filed a detailed report with the Board on June 3, 2008, recommending approval of all aspects of the application. Although the OP report recognized that the Caterpillar Preschool and CommuniKids are separate entities, it treated them as parts of one child development center for zoning purposes, and treated the Washington Conservatory as a private school. The report discussed all the provisions of the Zoning Regulations pertaining to the special exceptions for each use, but did not discuss whether the Caterpillar Preschool use and the CommuniKids use could individually meet the regulatory provisions. The report also addressed the addition to the church building and the enlargement and reconfiguration of the church parking lot within the context of the special exception discussions. The report finally then recommended approval for a child development center for a maximum of 80 children, with 17 staff, a private school for a maximum of 30 students, with 10 teachers, the building addition, and the reconfigured parking lot alternative that resulted in 27 spaces.

On June 9, 2008, the D.C. Department of Transportation (“DDOT”) filed a report with the Board which makes many suggestions concerning improving traffic in the vicinity of the church and the use of the church parking lot. The DDOT report suggested, for example, that the parking lot have 28 spaces, and not 36, as originally proposed by the Applicant, and that the Applicant install speed humps in the parking lot to calm traffic speeds. In the end, the DDOT report states that DDOT recommends approval of the application because “[t]he applicant has provided data or proposed measures that allow DDOT to recommend approval for the special exception.” Exhibit No. 58.

The D.C. Department of Health (“DOH”) filed a brief report with the Board on December 13, 2007 recommending approval of the special exception for a child development center. The DOH report does not address specifically which child development center it is recommending approval of or whether one or both can meet the applicable licensing requirements. *See*, 11 DCMR § 205.10. Nor does the report address the other relief requested, *i.e.*, for the private school, the building addition, or the parking lot.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 5**

ANC Reports. ANC 3F submitted a detailed resolution dated May 27, 2008 stating that it did not object to the application provided the Board took certain actions and included certain conditions in any order granting the application. Exhibit No. 55. Along with this resolution, the ANC submitted a 12-page, single-spaced report setting forth background and facts concerning the Applicant, the uses on its property, and the impacts of those uses on the neighborhood. Exhibit No. 54.

On November 20, 2008, the ANC submitted a second resolution addressing only the post-decision parking and landscaping plan submitted by the Applicant at the Board's request. The ANC's second resolution listed the ways in which the parking and landscaping plan did and did not comply with the Board's deliberations, stated that the plan did not meet the Board's pronouncements, and recommended that the Board "reject it as non-responsive." Exhibit No. 84.

A third ANC resolution was filed on March 20, 2009, after the Board, on its own motion, on February 17, 2009, had reopened the record to accept filings from the Applicant which went beyond the revised parking and landscaping plan requested by the Board on September 23, 2008. In the extra filings, the Applicant made several new requests of the Board: (a) permission to defer construction of the approved addition for five to seven years, (b) approval of an interim parking plan pending construction of the addition and then approval of a revised plan upon construction of the addition, and (c) operation of the approved preschool from 9:00 a.m. to 6:00 p.m., as opposed to 9:00 a.m. to 12:45 p.m. The ANC resolution also recounts that the Applicant, in a submission to the Board on February 27, 2009, made a further request – to substitute the Auburn School for the Washington Conservatory of Music, which, due to several factors, had reduced its use of the church's building to only one classroom.

The ANC's March 20, 2009 resolution did not support the Applicant's request for an extension of time within which to construct the addition, the substitution of the Auburn School for the Conservatory, or the extension of the hours of the Caterpillar Preschool until 6:00 p.m. This third resolution did not address the dual parking plan request, as the parking and landscaping plan had already been addressed in the ANC's second resolution. The third resolution further stated that the ANC did not object to the granting of the special exceptions to allow operation of the Caterpillar Preschool and the Washington Conservatory in the existing building, provided six explicit conditions were met. Exhibit No. 92.

**FINDINGS OF FACT**

The Property and the Surrounding Neighborhood

1. The subject property is located at 3920 Alton Place, N.W., in Square 1779, Lot 0824, and in an R-1-B zone district.
2. The property has an area of 35,443 square feet and, notwithstanding its name, sits at the intersection of Alton Place, to its north, and Nebraska Avenue, N.W., to its northwest.

**BZA APPLICATION NO. 17726**

**PAGE NO. 6**

3. Alton Place has a 60-foot wide right-of-way, with a 30-foot wide roadway and the portion of Alton Place adjacent to the subject property is a two-way street.
4. The property is a large through lot which includes the entire street frontage on Tenley Circle and Nebraska Avenue between Alton Place and Yuma Street, N.W.
5. To the southwest of the property is Tenley Circle, around which are located the Tenley Campus of American University, Saint Ann's Church and School, Saint Columba's Nursery School, and the Janney Elementary School.
6. To its immediate west, between the church site and Nebraska Avenue, the subject property is bounded by Federal Reservation 399, which is a portion of Fort Circle Park, under the jurisdiction of the National Park Service.
7. To the south, the property is bounded by Yuma Street, a two-way street, 90 feet wide, with a 34-foot-wide roadway.
8. To the east, the property abuts the rear yards of five one-family detached dwellings which front on 39th Street, N.W.
9. Generally, to the northeast, east, and southeast, the property is surrounded by residential neighborhoods, while to the north, due south, and all along its western side, are commercial areas.
10. The Tenleytown Metro Station is located two blocks north of the property and several Metro Bus lines run along Tenley Circle and Nebraska Avenue.
11. The property is improved with a two-story church structure built in 1954, which includes the church sanctuary and a two-story wing, with basement,<sup>3</sup> devoted to administrative/school uses ("educational wing").
12. The church sanctuary contains seating for approximately 294 persons, but the church use per se has no parking requirement under the Zoning Regulations because the church was built before May 12, 1958. 11 DCMR § 2100.1.
13. The building contains approximately 20,200 square feet of gross floor area and has rooms available for use for religious education classes, meetings, and other activities.
14. An outdoor play area is located on the property and no off-site play area is used by the church or other users of the subject property.

---

<sup>3</sup>Although sometimes referred to by the Applicant as a "cellar," the lowest level of the educational wing was referred to as a basement by this Board in 1980. *See*, Board Order No. 13065, at 2, January 28, 1980.

15. Also on the property is an existing 21-space parking lot which services the church and educational uses on the property. The parking lot is accessed through a single curb cut on Alton Place, leading to a long drive aisle, and both the drive aisle and the parking lot itself run parallel to the rear yards of the homes on 39th Street.
16. There is currently a wooden stockade fence between the drive aisle and parking lot and the rear yards of the homes on 39th Street.
17. Nestled against the rear of the existing church building, at its northeast corner, is a 6-foot high wooden stockade trash enclosure sitting on a concrete base. This base extends a few feet beyond the enclosure to accommodate one trash container which remains outside the enclosure to allow immediate access.
18. The church and parking lot are located on the eastern side of the property, leaving a significant swath of lawn area along the western side, and particularly at the southwest corner.
19. Other than using the property for Sunday church services and associated church uses, the Applicant leases space within its building to three entities: (a) Caterpillar Preschool, which is an informal co-op preschool formed by parents and located on the property since 2003 or 2004, (b) CommuniKids, which offers foreign language lessons to children from one to eight years of age, and which has been located on the property since 2005, and (c) the Washington Conservatory of Music, which has offered individual voice and instrumental lessons to both children and adults at the property since 2006.

#### The Applicant's Proposals

20. The Applicant proposes to construct a two-story plus basement addition to the educational wing which will add 10 classrooms to its already-existing classrooms. This addition will be constructed at the southeast corner of the existing building, within the area of the existing parking lot.
21. The proposed addition needs no dimensional zoning relief, and requires relief only because it will house the special exception uses.<sup>4</sup> It will be used by the child development centers and private school for which special exception relief is herein requested, as will the expanded and reconfigured parking lot.

---

<sup>4</sup>The physical "plant" of the addition needs no zoning relief, but the Board decided special exception relief was needed for the addition because it was to be used by the special exception uses. (*See*, Transcript of September 23, 2008 decision meeting, at 160-162.) Also, after the September 23, 2008, decision meeting, the Applicant requested further zoning relief for the addition in that it requested that the two-year period of time authorized by 11 DCMR § 3130.1 be extended to permit the Applicant five to seven years within to construct the addition. Exhibit No. 83. *See*, discussion in Conclusions of Law, *infra*.

**BZA APPLICATION NO. 17726**

**PAGE NO. 8**

22. The three non-church-related uses in the building, the Caterpillar Preschool, CommuniKids, and the Conservatory, will continue to operate and are all seeking to increase their intensity of use.
23. Each special exception use will also have access to a playground area which will be re-located to the western side of the lot, between the existing structure and Nebraska Avenue.
24. The Applicant proposes a daily maximum cap of 291 persons associated with these three non-church-related uses using the subject property on any given day and an at-any-one-time cap of such persons of 97.

*The Parking Lot*

25. The Applicant proposes two parking lot plans – one as an interim measure until the addition is completed, and a second plan which depicts the final parking lot configuration to be constructed concurrent with, and/or after, the construction of the addition. Exhibit No. 83, Attached plans.
26. Both parking lots (interim and final) will contain 27 parking spaces, including two handicapped spaces, and will extend along the south side of the property, parallel to Yuma Street.
27. Both parking lots will have a designated drop-off/pick-up lane and designated drop-off/pick-up point for children.
28. Both parking lots will feature a new curb cut and driveway on Yuma Street, leading to a 20-foot drive aisle.
29. In the case of both parking lots, the existing drive aisle extending from the Alton Place driveway, at a relatively narrow 12 feet wide, will be used only as an entrance, while the new drive aisle leading to Yuma Street will be used both as an entrance and an exit.
30. Currently, with only one curb cut servicing the parking lot, on Alton Place, and no signal at the intersection of Alton Place and Nebraska Avenue, vehicles leaving the parking lot and turning left onto Alton Place in order to then turn onto Nebraska Avenue cause some congestion.
31. Pursuant to the Zoning Regulations, the church use requires zero parking spaces, and the three other proposed uses – Caterpillar Preschool, CommuniKids, and the Washington Conservatory – currently require a total of 11 parking spaces. 11 DCMR § 2101.1. (Caterpillar and CommuniKids together currently require 4 spaces, and the Conservatory currently requires 7).



**BZA APPLICATION NO. 17726**

**PAGE NO. 9**

32. Both new parking lot configurations will be screened from Yuma Street and Tenley Circle/Nebraska Avenue by enhanced perimeter landscaping and both will also feature greenery within the lot itself.
33. There are 43 on-street parking spaces located immediately adjacent to the property along the 3900 blocks of Alton Place and Yuma Street, with an average of approximately 18 open spaces during the hours when the proposed uses are operating. Exhibit No. 53, at 10-11.

*The Caterpillar Preschool*

34. The Caterpillar Preschool currently holds three concurrent sessions for children ages two to five, on weekday mornings from 9:00 a.m. to noon during the fall, winter, and spring, with a lunch option to stay until 12:30 p.m.
35. The Caterpillar Preschool currently serves 24 children, has three teachers and three parent volunteers, and uses three rooms in the existing church building.
36. Currently, 78% of the children in the Preschool and 57% of the teachers arrive by vehicle. Exhibit No. 53, Fourth Attachment, "Traffic and Parking Summary," at 10.
37. Generally, children are dropped off between 8:50 and 9:05 a.m. and picked up between 12:00 and 12:30 p.m.
38. Most drop-off/pick-up activity takes place in the parking lot, although some parents park briefly on Alton Place, which has signs designating a drop-off/pick-zone, or Yuma Street, and some children arrive by metro.
39. Caterpillar Preschool children are taken outside to use the playground for 30 minutes each day.
40. The Caterpillar Preschool is currently allotted the use of four spaces in the parking lot.
41. The Caterpillar Preschool seeks to expand to a maximum of 56 children, supervised by seven teachers and seven parents. The Preschool also seeks to expand its hours until 6:00 p.m. and to include an early drop-off period beginning at 7:30 a.m.

*CommuniKids*

42. CommuniKids holds classes in the fall, winter, and spring on weekdays and Saturdays, with most classes lasting an hour, but some more intensive classes last up to two hours.
43. On each weekday, one or two classes are offered at any one time, with an average of four classes held on any given day, and on Saturday, up to six classes are taught at any one time.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 10**

44. Classes are taught by one teacher for up to eight students and are broken down by age. Children in the two youngest classroom groups, who range from 12 to 36 months old,<sup>5</sup> are accompanied to class by an adult.
45. Weekday classes are usually between the hours of 9:00 a.m. and 1:00 p.m. and between 3:00 and 6:00 p.m., while on Saturdays, classes may be held between 9:00 a.m. and 4:00 p.m., but are generally held in the morning.
46. Classes usually have different start and end times, so one class may start at, for example, 10:00, and another at 10:30.
47. CommuniKids also holds a greatly reduced number of Saturday classes during the summer and a summer camp on weekdays from 9:00 to noon, for up to 30 children aged three to five, supervised by six staff.
48. Children in the summer camp are taken out to play on the playground as part of their day, but the camp does not engage in off-site field trips, so no buses are used.
49. During the school year, CommuniKids is currently allotted the use of three parking spaces in the parking lot and is free to use the whole lot on Saturdays.
50. Most children are dropped off approximately 10 minutes before a class begins and picked up approximately 10 minutes after a class ends, and most of this activity occurs in the parking lot, although some drop-offs and pick-ups occur on Alton Place or Yuma Street.
51. Currently, about 50% of the teachers and 75% of the children arrive at the property in vehicles, while the rest use other forms of transportation. Thirty-one percent of the children are in carpools. Exhibit No. 53, at 5, and Fourth Attachment, "Traffic and Parking Summary," at 10.
52. CommuniKids seeks to expand to hold three classes at any one time on weekdays, for up to 24 children, with three teachers, and to hold up to six classes at any one time on Saturday, for up to 48 children, with six teachers.<sup>6</sup>

---

<sup>5</sup>The Applicant indicated that CommuniKids would increase the age of its youngest students to two years old in order to comply with the definition of "child development center" at 11 DCMR § 199.1. Exhibit No. 70, Attachment D, footnote #2.

<sup>6</sup>The Board is unclear why holding six classes at any one time on Saturdays would be an "expansion" for CommuniKids. Although the Applicant's Prehearing Statement states that this would be part of CommuniKids' requested expansion (*see* Exhibit No. 53, top of page 5), that same Statement also says that CommuniKids is currently already holding up to six classes at any one time on Saturdays (*see* Exhibit No. 53, bottom of page 4). (*See also*, Transcript of June 10, 2008 Hearing, at 225, lines 13-16 and at 226, lines 17-22, where the same apparent confusion appears.)

**BZA APPLICATION NO. 17726**  
**PAGE NO. 11**

53. CommuniKids also seeks to expand its summer camp to be held from 9:00 a.m. to 4:00 p.m. for six staff and up to 30 children, approximately half of whom would leave at 3:00 p.m.

*The Washington Conservatory of Music*

54. The Conservatory provides weekday music lessons for children and adults from 2:00 p.m. to 9:00 p.m., with each lesson lasting 30, 45, or 60 minutes.
55. No recitals or concerts are given on the subject property.
56. The Conservatory has the use of up to nine rooms in the building, with one lesson per room involving one teacher and one student.
57. Lessons are scheduled on demand, thus not all rooms are used at one time, nor do all lessons begin at the same time, for example, one might begin at 3:00, while another begins at 3:15.
58. Currently, 80% of the teachers and 80% of the music students arrive by vehicle. Exhibit No. 53, Fourth Attachment, "Traffic and Parking Summary," at 10.
59. The Conservatory currently has the use of 10 parking spaces in the parking lot.
60. The Conservatory seeks to expand to the use of 10 rooms, meaning the maximum number of lessons provided at any one time would be 10, although because some lessons could involve ensembles or small groups, maximum student participation could vary from 10 to 30 individuals.
61. The Conservatory also seeks to add Saturday lessons, between the hours of 9:00 a.m. and 5:00 p.m.

The Special Exception Relief for the Child Development Centers

62. Both the Caterpillar Preschool and CommuniKids uses must meet the requirements of § 205 to be granted special exception relief pursuant to 11 DCMR § 205.

*Caterpillar Preschool*

63. The Caterpillar Preschool is currently pursuing the necessary licensing as a "child development center" with the Department of Health and the DOH report recommended granting the application, indicating that the child development center would add to the licensed child care slots in the District of Columbia. 11 DCMR §§ 205.2 & 205.10.

**BZA APPLICATION NO. 17726**

**PAGE NO. 12**

64. With its planned expansion to seven teachers and seven parent volunteers, Caterpillar Preschool will require four parking spaces, which can be easily accommodated in both the interim and final parking lots. 11 DCMR § 205.4, 2101.1, & 2118.6.
65. Both parking lot reconfigurations result in a safer parking lot, with a separate lane for drop-off and pick-up of children. The final parking lot also features a new walkway extending around the educational wing and connecting to the re-located playground area. 11 DCMR § 205.3.
66. The re-located playground area is approximately 75 feet from the rear yards of the closest neighbors and is separated from those rear yards by the church building complex. 11 DCMR § 205.5.
67. There is no off-site play area associated with the Caterpillar Preschool and there is no other child development center within 1,000 feet of the subject property, with the exception, of course, of CommuniKids, which is on the subject property. 11 DCMR §§ 205.7 & 205.8.
68. The designation of the Alton Place parking lot access as solely for entering the parking lot prevents drivers from exiting the property onto Alton Place, reducing the congestion on Alton Place, particularly at its intersection with Nebraska Avenue. 11 DCMR § 205.3.
69. The new curb cut and two-way access to the parking lot from Yuma Street, as well as the new separate drop-off/pick-up lane, allow for greater queuing on the property, improving overall traffic circulation in the area. 11 DCMR § 205.3.
70. A child development center use, as it is permitted as a special exception in the most restrictive residential zone – R-1 – is deemed compatible with that zone, if it meets applicable provisions of the regulations. 11 DCMR § 3104.

*CommuniKids*

71. CommuniKids is a for-profit limited liability corporation organized under the laws of Maryland.
72. The definition of “Child/Elderly development center” in the Zoning Regulations requires that such a center provide “non-residential licensed care, education, counseling, or training....” (Emphasis added.) 11 DCMR § 199.1.
73. CommuniKids is not licensed as a child development center. It is more akin to an enrichment program, providing education in one specific area - languages. See, Exhibit No. 24, Attached “Amended and Restated Statement ... of Applicant,” at footnote #1.
74. Section 205 of the Zoning Regulations does not specify that permissible child development centers must be not-for-profit, but it does specify that the center must be capable of meeting all applicable code and licensing requirements. 11 DCMR § 205.2.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 13**

75. With the proposed increase in its classes, CommuniKids will have three teachers on the property at any one time on weekdays, requiring one parking space, and will have up to six teachers on-site at any one time on Saturdays, requiring two parking spaces. 11 DCMR §§ 205.4, 2101.1 & 2118.6.
76. Three parking spaces, during the week, and six parking spaces, on Saturdays, will be allotted to CommuniKids for its use. 11 DCMR § 205.4.
77. Of the four age-group categories into which CommuniKids' classes are divided, two require that an adult accompany each child attending the class, in effect, doubling the number of individuals attending each of these classes.
78. CommuniKids would also have the benefit of the separate drop-off/pick-up lane created in the reconfigured parking lot. 11 DCMR § 205.3.
79. As CommuniKids' classes are usually one hour long, there is no use of any outdoor play area. 11 DCMR §§ 205.5 & 205.7.
80. There is no other child development center within 1,000 feet, other than the Caterpillar Preschool. 11 DCMR § 205.8.
81. The benefits of the new on-site parking and circulation lay-out cited in Findings of Fact numbers 65, 68, and 69 also inure to CommuniKids. 11 DCMR § 205.3.
82. A child development center use, as it is permitted as a special exception in the most restrictive residential zone – R-1 – is deemed compatible with that zone, but it must meet applicable provisions in the regulations. 11 DCMR § 3104.

The Special Exception Relief for the Private School

*Washington Conservatory of Music*

83. The Conservatory must meet the requirements of § 206 in order to be granted a special exception to operate as a private school in this R-1-B zone district.
84. With its proposed expansion, the Conservatory would have, at most, 10 teachers and 30 students on the subject property, requiring eight parking spaces, which will be accommodated in both parking lot plans. 11 DCMR §§ 206.3, 2101.1 & 2118.6.
85. Rooms used by the Conservatory will be outfitted to contain sound, and most rooms used for music instruction will be in the basement. 11 DCMR § 206.2.
86. There is no outdoor use of the property by the Conservatory. 11 DCMR § 206.2.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 14**

87. Due to the staggered scheduling of lessons, there is no time of day when more than four or five students arrive and depart at the same time. 11 DCMR § 206.2.
88. The benefits of the new on-site parking and circulation lay-out cited in Findings of Fact numbers 65, 68, and 69 also inure to the Conservatory. 11 DCMR §§ 206.2 & 206.3.
89. A private school use, as it is permitted as a special exception in the most restrictive residential zone – R-1 – is deemed compatible with that zone, if it meets applicable provisions in the regulations. 11 DCMR § 3104.

The Special Exception Relief for the Parking Lot

90. The reconfiguration of the parking lot requires zoning relief in that it is servicing the three special exception uses, and therefore, must enable these uses to comply with the applicable provisions of the Zoning Regulations.
91. Both the interim and final parking lot plans contain 27 spaces, which is sufficient to handle the projected peak parking demand of 23, plus 4 spaces for the church staff. Exhibit No. 53, Attachment #4, “Traffic and Parking Summary,” at 13.
92. The enlargement and reconfiguration of the parking lot, in both its interim and final phases, will allow the special exception uses, as well as church-related uses, more, and better engineered space on the property, better servicing the public. 11 DCMR § 3104.
93. Both the interim and final parking lot iterations, featuring a new curb cut, circulation system, and separate drop-off/pick-up lane, along with improved landscaping, will enhance the use of the property while reducing idling, with its attendant fumes, and queuing and congestion on local streets. 11 DCMR §§ 205.3, 205.4, 206.2, 206.3, & 3104.
94. The current location of the trash enclosure is close to the street, obviating the need for trash trucks to drive into the parking lot or up the drive aisle any significant distance, and this location will not be affected by the changes to the parking lot.

**CONCLUSIONS OF LAW**

Special Exception Relief

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 205 with regard to the two proposed child development centers and those of § 206 with regard to the proposed private school.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 15**

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, “[t]he Board’s discretion ... is limited to determining whether the proposed exception satisfies the ... requirements” of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Although the proceedings in this case were prolonged and many issues were raised, the disposition of the requests for relief demands a straightforward adherence to the provisions of §§ 3104, 205 and 206 of the Zoning Regulations. Section 205 sets forth the standards for child development centers, all of which had to be met by both the Caterpillar Preschool and CommuniKids, and § 206 sets forth the standards for private schools, all of which had to be met by the Washington Conservatory. Section 3104 provides general standards which must be met by all special exceptions.

*Caterpillar Preschool*

The Caterpillar Preschool is currently pursuing proper licensing as a child development center with the Department of Health, as is required by § 205.2. Sections 205.3 and 205.4 require that the child development center create no objectionable traffic condition and no unsafe drop-off/pick-up condition, and that sufficient off-street parking spaces are provided for the center’s use. The parking lot on the subject property, with 27 spaces in both its interim and final iterations, will provide sufficient off-street parking for the Caterpillar Preschool. The Preschool plans to expand to include 56 children, supervised by seven teachers and seven parent volunteers. Although § 205.4 merely states that “sufficient” parking must be provided, the Board looks to the parking schedule set forth in 11 DCMR § 2101.1 as guidance in determining what is “sufficient.” The parking required by § 2101.1 for a child development center in all zone districts is one space for each four teachers or other employees, with any fraction of one-half or more requiring another space. 11 DCMR § 2118.6. With 14 workers, the Preschool will therefore require four parking spaces, which are provided in the on-site parking lot.

The reconfigured parking lot will (in both iterations) contain a separate designated drop-off/pick-up lane, an improvement over the current situation, where no such separate lane exists. The parking lot will also be reconfigured by the addition of a new curb cut and two-way drive aisle leading from Yuma Street. The addition of this new entrance/exit will allow the church to designate the drive aisle from Alton Place to be used only for entry. The separate drop-off/pick-up lane and the ability to flow through from Alton Place to an exit on Yuma Street will greatly increase safety within the parking lot itself and will also result in less drop-off/pick-up and queuing activity on local streets. This activity, some of which currently does occur on Alton Place, has resulted in traffic congestion in the past. Such congestion will be alleviated by the

**BZA APPLICATION NO. 17726**  
**PAGE NO. 16**

new parking lot design, therefore no objectionable traffic condition will be caused by the operation of the Preschool.

The outdoor playground area used by the preschool is on the subject property, located on the opposite side of the site from the closest neighbors. It is nestled within the juncture of the sanctuary and the educational wing, and is bounded on its other two sides by the parking lot and the undeveloped National Park Service land. It is approximately 75 feet from the rear yard of the nearest home on 39<sup>th</sup> Street. This distance and the intervening building will mitigate any noise associated with the use of the playground. Further, the playground is only used during the day by the Preschool, and not in the evening, when noise or other activity might pose a greater disturbance. The Board concludes that, as required by § 205.5, the outdoor playground area will not have any objectionable impacts on adjacent or nearby properties.

There is no off-site play area used by the Preschool (§ 205.7) and no other child development center, other than CommuniKids, (if it qualifies as a child development center), within 1,000 feet of the Preschool (§ 205.8).

The last relevant provision of § 205 is § 205.6, which permits the Board to require special site treatments if deemed necessary to protect adjacent and nearby properties. The treatments deemed necessary by the Board are contained in the Conditions set forth at the end of this order.

Child development centers, by virtue of their special exception status, have been deemed compatible with residential zone districts. The Caterpillar Preschool will provide a service to the immediate neighborhood as well as to parents farther afield and is located in a building that is situated on a site large enough to provide the necessary parking as well as an outdoor play area. The Board concludes that the Caterpillar Preschool meets the requirements of § 205, and further, that, pursuant to § 3104, the use is in harmony with the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property.

*CommuniKids*

Section 205.1 allows the Board to permit use as a child development center as a special exception, and the Applicant has presented CommuniKids as a child development center. A child development center, by definition, must provide “non-residential *licensed* care, education, counseling, or training.” (Emphasis added.) 11 DCMR § 199.1, definition of “Child/Elderly development center.” The Department of Health licenses child care programs. *See*, Exhibit No. 19. The Applicant itself, however, stated that CommuniKids is “exempt” from licensing requirements. Exhibit No. 53, at 2, footnote #1.

The one-hour language classes provided by CommuniKids are more like an unlicensed enrichment program than a licensed child development center. An “enrichment program,” by its very nature, “enriches” something else, and in this case, the language program provided by CommuniKids enriches the children’s time in the child development center. This conclusion is



bolstered by the fact that CommuniKids does not provide any type of general childcare, often associated with a true child development center. Clearly, by deciding that CommuniKids does not need to be licensed as a child development center, the Department of Health has come to the conclusion that CommuniKids is not a child development center, and the Board agrees with this conclusion; therefore, it need go no further in its analysis under § 205.

*The Washington Conservatory of Music*

The Conservatory must meet the requirements of § 206 in order to be granted a special exception to operate as a private school in this R-1 zone district. Section 206.2 mandates that the school must not cause objectionable conditions for adjacent and nearby properties, particularly due to noise, traffic, or number of students. The Conservatory creates no significant objectionable conditions for the Applicant's neighbors. During the hearing before the Board, there was some discussion of noise in the parking lot, such as people talking as late as 9:00 p.m. or so, when the last music lesson ended. Occasional conversational voices, however, do not rise to the level of an objectionable condition, especially when the closest adjacent properties are separated by rear yards and a stockade fence. As for the music itself, there was some evidence that it could be heard by neighbors, but the rooms in the addition to be used by the Conservatory will be in the basement and/or treated to prevent sound diffusion, mitigating or eliminating any potentially objectionable condition.

The enlargement and reconfiguration of the parking lot, as discussed above in the context of the Preschool, will mitigate or eliminate any traffic congestion on local streets due to the Conservatory. With the extension of the Preschool's hours to 6:00 p.m., there will be some overlap between the hours of operation of the Conservatory and those of the Preschool on weekday afternoons/evenings. This should not pose a significant problem, however, as there is sufficient room in the parking lot to accommodate the simultaneous use, particularly with the elimination of CommuniKids from the subject property.

The Conservatory intentionally staggers the beginning and ending times of its lessons, so that at no particular hour of the day are there more than four or five students arriving or departing. Also, most often music lessons are one-on-one, with one teacher and one student. Therefore, even after the expansion to the use of 10 classrooms, generally, the maximum number of persons on-site at any one time associated with the Conservatory will be 20. Occasionally, when small ensembles meet with a teacher, this number may increase, but the Applicant states that it will cap the number at 30. As no recitals or concerts are given at the subject property, there will never be a time when an exceptionally large or unprecedented number of individuals will be arriving or leaving the site at the same time due to the Conservatory use.

Section 206.3 mandates that a private school provide "ample" parking, but not less than that required by Chapter 21 of the Zoning Regulations. With its proposed expansion, the Conservatory use will be required to provide at least eight parking spaces for its proposed 10 teachers and 30 students. 11 DCMR § 2101.1. Both iterations of the parking lot on the subject

property enable the Conservatory to provide eight parking spaces. During the period of overlap between the Preschool hours and those of the Conservatory, a total of 12 parking spaces will be “required,” but 27 will be provided, making 15 more spaces available than the minimum required.

Although the cumulative number of students who take lessons at the Conservatory over the span of each week is large, there is never a large number of persons associated with the use on site at any one time. Ample parking and improved parking lot circulation have been provided for the use and sound-proofing will also be provided. The Board concludes that the Conservatory meets the requirements of § 206, and further, that, pursuant to § 3104, the use is in harmony with the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property.

*The addition and the parking lot*

The proposed addition meets all the required dimensional parameters of the Zoning Regulations, and so needs no zoning relief going to its size, bulk, or height. Zoning relief is needed only in that the addition will be used by the special exception uses. The same is true of the parking lot. It will have the requisite screening, landscaping and dimensions, but needs relief only in conjunction with the special exception uses that it will serve. Both the addition and the reconfigured parking lot, with its improvements, will be an amenity to the property, and, by extension, to the community. They are part of the church itself – a matter-of-right use in this R-1-B zone district – and will accommodate and support the special exception uses, which enhance the fabric of the neighborhood. Therefore, the Board concludes that the construction of the addition and the parking lot are, pursuant to § 3104, in harmony with the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

*Post-decision requests of Applicant*

Subsequent to the decision meeting of the Board on September 23, 2008, the Applicant made further requests of the Board, one of which involved the parking lot and one of which involved the addition. The Applicant requested that the Board accept an interim parking lot plan pending construction of the addition, and then a somewhat different, final, parking lot plan to be constructed concurrent with the addition, and which would remain in place for the future. Both plans would have 27 parking spaces, including two handicapped spaces, a separate drop-off/pick-up lane, entrance only on Alton Place, a new curb cut and two-way drive aisle from Yuma Street, and new landscaping. Both plans represent a significant improvement over the current situation and implementing the interim plan immediately will provide the neighborhood with the traffic and queuing reduction benefits which will result from its improved design. The implementation of the final parking lot design will extend those benefits into the future.

The late request made by the Applicant with respect to the addition was to extend the time within which it could be constructed. Section 3130.1 of the Zoning Regulations states that: “No order

**BZA APPLICATION NO. 17726**  
**PAGE NO. 19**

of the Board authorizing the erection or alteration of a structure shall be valid for period longer than two (2) years” unless, during this two-year period, plans are filed in order to secure a building permit. The Applicant requested that the Board essentially waive this 2-year period requirement and permit a period of from five to seven years within which to file construction plans. The Board declines to waive the 2-year period at this time. Traditionally, applicants have come back to the Board when the period is approaching its end to request an extension, and this Applicant is free to do the same. The Board sees no reason to grant such an extension now, in the absence of a definite need for it.

Subsequent to the penultimate decision meeting in this application, the Applicant made one further request of the Board. The Applicant asked that it be permitted to substitute for the Washington Conservatory a different private school – the Auburn School. A February 26, 2009 letter in the record explains that the Conservatory, due to the delay and the uncertainty of the outcome of the BZA application, had reduced its use of the subject property to only one room and one teacher, who would soon be moved to a different location. The Conservatory, in its letter, suggests that the Applicant replace it. Exhibit No. 90, First Attachment. The Applicant, therefore, so requested of the Board.

The Board declines to address the Applicant’s request to replace the Washington Conservatory of Music with the Auburn School. The Auburn School use was not part of this application and is not before the Board. It was introduced at virtually the end of the proceedings in this case. There was no evidence regarding it produced at the hearing, and neither the Board nor the other parties had any idea that its installation on the subject property was a possibility until long after the Board had made a decision on the merits of this case. The Board agreed to address the Applicant’s three post-decision requests (interim and final parking plans, extension of hours of Preschool, and extension of time within which to build addition) because each of these requests materially related to one of the original requests for relief, which had been fully vetted at the hearing and in the filings in the record. Such is not the case with the request to introduce the Auburn School. Neither the School, nor its impacts, was ever presented to the Board and the Board has no authority to address them now.

Great Weight

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended approval of all the relief requested, *i.e.*, for a child development center, a private school, the addition, and the reconfiguration of the parking lot. OP did not, however, provide separate recommendations for the Caterpillar Preschool and CommuniKids, treating the two entities as one child development center. Based on all the evidence adduced during these proceedings, the Board decided to treat the two entities

separately, and insofar as OP's recommendation with respect to the Preschool, the Board is in agreement. Having treated CommuniKids separately, however, and for all the reasons stated with reference to this use, the Board disagrees with OP's recommendation of approval of CommuniKids.

ANC 3F played a central role in the proceedings in this case. The ANC as a whole designated five individual Commissioners as representatives, four of whom either testified, presented the ANC's case at the hearing, or filed documents in the record. The ANC filed three lengthy resolutions – Exhibits Nos. 55, 84, and 92 – and several other documents, such as background information, or responses to the Applicant's filings. Exhibits Nos. 63, 69, and 71.

The ANC's initial resolution, filed with a very detailed, 12-page, single-spaced report, states that the ANC "does not object to" the application "provided that the conditions below ... are incorporated into the Order." Exhibit No. 55 at 3. The resolution then recites 17 conditions, only some of which are incorporated into this Order.

In any application, when an ANC states that it "does not object provided certain conditions are met," and not all the conditions are met, the Board does not automatically treat this as a recommendation of disapproval by the ANC. In this case, however, the ANC's presentation at the hearing (to which great weight is not given) was heavily weighted against the application, and its next two resolutions were against specific aspects of the application. Further, it was pointed out several times by the ANC representatives that the original resolution – Exhibit No. 55 – dated May 27, 2008, was drafted at a time when the ANC believed that the construction of the addition was a matter-of-right and did not need zoning relief as an adjunct to relief for the special exception uses. At the hearing, the ANC representative made clear that the resolution may have been different if the ANC had known, at that time, that relief would be requested/needed for the addition itself. *See, e.g.*, Transcript of June 17, 2008 hearing, at 426, lines 8-22 and at 427, lines 1-5. *See also*, Exhibit No. 72, letter from ANC Chair addressing the issue.

The ANC's second resolution, dated November 17, 2008, responded to the Applicant's revised parking and landscaping plan. The second resolution stated that the plan did "not meet the conditions set forth by the Board at the September 23, 2008 meeting and recommend[ed] that the Board reject it as non-responsive." Exhibit No. 84 at 3. The ANC's third resolution, dated March 16, 2009, rejected the Auburn School, did not support the extension of the hours of the Preschool, and did not support the 5-7 year extension within which to construct the addition. Exhibit No. 92, at 3. In conclusion, the third resolution states that the ANC "did not object to the Board granting special exception use to the Caterpillar Co-op and the Washington Conservatory of Music for them to operate in the current building [as opposed to in the addition] provided..." and then the resolution lists six conditions, not all of which are in this Order.

Both the first and the third resolutions stated that the ANC "did not object" to the application, or to the Preschool and the Conservatory uses, respectively, but both listed several conditions

appended to those “non-objections.” The Board agrees with the position of “non-objection” and voted to approve both the Preschool and Conservatory uses. At its last decision meeting, on March 24, 2009, the Board went through the ANC’s conditions (as well as those proffered by the Applicant and the opposing party) seriatim and tried to address each one, while only including in the decision those which it felt were necessary. Some of the ANC’s conditions were accepted by the Board and some were not, but all were considered. Throughout these long proceedings, the Board has acknowledged and thoughtfully considered all of the ANC’s issues and concerns, and has therefore accorded its issues and concerns “great weight”.

For all of the reasons stated above, the Board concludes that:

1. The Applicant has failed to satisfy the burden of proof with respect to an application for a special exception for a child development center for CommuniKids pursuant to § 205, namely that the use as proposed will be a child development center use, , and accordingly, that part of the application requesting such a special exception is hereby **DENIED**;
2. The Applicant has failed to satisfy the burden of proof with respect to its request for waiver of the 2-year period of § 3130.1, and accordingly, that request is hereby **DENIED**; and
3. The Applicant has satisfied the burden of proof with respect to special exceptions to allow the construction of an addition to an existing church building, the operation therein of a child development center for the Caterpillar Preschool, pursuant to § 205, and a private school, pursuant to § 206, and the interim and final reconfiguration of the parking lot serving such uses, as depicted at Exhibit No. 83. Accordingly, these special exceptions are hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:
  - A. The hours of operation of the church building educational wing (i.e., not including the sanctuary) shall be from 9:00 a.m. to 9:00 p.m. Monday through Friday, and 9:00 a.m. to 5:00 p.m. on Saturday. The hours of operation of the Caterpillar Preschool shall be from 9:00 a.m. to 6:00 p.m. Monday through Friday, with an early morning drop-off period permitted from 7:30 a.m. to 9:00 a.m.
  - B. The Applicant shall provide a waiting room inside the building for parents and caregivers during the operation of the child development center and/or the private school.
  - C. Studios and rooms intended for use by the private school shall be designed, engineered, and constructed to limit sound transfer.
  - D. The Applicant shall direct all individuals who drive to the subject property to, if possible, park in the parking lot, and not on surrounding streets.

**BZA APPLICATION NO. 17726**  
**PAGE NO. 22**

- E. The Applicant shall implement the Traffic Management Plan proposed by Gorove/Slade Associates, Inc., which appears at page 5 of Attachment No. 4 of Exhibit No. 53.
- F. The Applicant shall certify, in writing, its compliance with these conditions to ANC 3F on an annual basis.

**VOTE AT 9/23/08**

**DECISION MEETING: 5-0-0**

(Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, Mary Oates Walker, and Gregory N. Jeffries, to partially grant and partially deny.)

**VOTE AT 3/24/09**

**DECISION MEETING: 4-0-1**

(Ruthanne G. Miller, Shane L. Dettman, Marc D. Loud, and Gregory N. Jeffries, to partially grant and partially deny. Fifth member not participating or voting.)

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

Pursuant to §3125.10, a majority of Board members approved the issuance of this order, including Meridith H. Moldenhauer who read the record.

ATTESTED BY:



**JAMISON L. WEINBAUM**

**Director, Office of Zoning**

**FINAL DATE OF ORDER:** NOV 10 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR

THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

LM

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**BZA APPLICATION NO. 17726**

As Director of the Office of Zoning, I hereby certify and attest that on **NOVEMBER 10, 2009**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Jacques B. DePuy, Esq.  
Lyle M. Blanchard, Esq.  
Stephanie A. Baldwin, Esq.  
Greenstein DeLorme & Luchs, P.C.  
1620 L Street, N.W., Suite 900  
Washington, D.C. 20036

Mary Ann Hutton  
Trustee  
Wisconsin Avenue Baptist Church  
3920 Alton Place, N.W.  
Washington, D.C. 20016

Reverend Lynn Bergfalk  
3568 Brandywine Street, N.W.  
Washington, D.C. 20008

Families Neighboring Wisconsin Avenue Baptist Church:

Daniel S. Wilson  
Judy L. Chesser  
3901 Alton Place, N.W.  
Washington, D.C. 20016

Stephen L. Hirsh  
Susan M. Feeney  
4415 39<sup>th</sup> Street, N.W.  
Washington, D.C. 20016



**BZA APPLICATION NO. 17726**  
**PAGE NO. 2**

Jose Antonio Mejia  
Pamela Roberts  
3900 Alton Place, N.W.  
Washington, D.C. 20016

Jose Miguel Vivanco  
Lisa L. Bhansali  
3903 Alton Place, N.W.  
Washington, D.C. 20016

John & Patrice Allen-Gifford  
4412 39<sup>th</sup> Street, N.W.  
Washington, D.C. 20016

John Watts  
Carol Annie Petsonk  
4413 39<sup>th</sup> Street, N.W.  
Washington, D.C. 20016

Jeffrey L. & Marie Kiczela  
4404 39<sup>th</sup> Street, N.W.  
Washington, D.C. 20016

Chairperson  
Advisory Neighborhood Commission 3F  
Box 244, 4401-A Connecticut Avenue, N.W.  
Washington, D.C. 20008

Single Member District Commissioner 3F06  
Advisory Neighborhood Commission 3F  
Box 244, 4401-A Connecticut Avenue, N.W.  
Washington, D.C. 20008

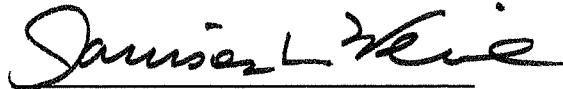
Mary H. Cheh, Councilmember  
Ward Three  
1350 Pennsylvania Avenue, N.W., Suite 108  
Washington, D.C. 20004

**BZA APPLICATION NO. 17726**

**PAGE NO. 3**

Bennett Rushkoff, Esquire  
Acting General Counsel  
Department of Consumer and Regulatory Affairs  
941 North Capitol Street, N.E., Suite 9400  
Washington, D.C. 20002

**ATTESTED BY:**



**JAMISON L. WEINBAUM**

**Director, Office of Zoning**