

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18013-A of Franklin Commons Intergenerational Day Care Center, Inc., pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the off-street parking requirements under § 2101.1, and a special exception from the child development center provisions under § 205, for the continued operation of a child development center consisting of 50 children and 14 staff in the R-3 District at premises 119 Franklin Street, N.E. (Square 3505, Lot 802).¹

HEARING DATES: April 21, 2015² and May 19, 2015

DECISION DATE: May 19, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated May 7, 2015, from the Zoning Administrator, certifying the relief required for the application to continue operations at the existing Child Development Center. (Exhibit 42.)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application. ANC 5E filed a report/resolution in support of the application. In its report the ANC indicated that at a regularly scheduled and properly noticed public meeting, at which a quorum was present, the ANC voted 10-0 to support the application. (Exhibit 40.)

¹ The Board granted special exception relief under § 205 to operate a child development center for 50 children and 14 staff in Case No. 18013. The only condition in that case was a five-year term, which expired in February 2015. This application (No. 18013-A) was filed to request to continue operations. The original application also requested an increase in the hours of operation, but the request for such an increase was removed by the Applicant. (Exhibit 21.)

² The public hearing in this case was continued from April 21, 2015 to May 19, 2015 because notice was posted late.

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The Office of Planning ("OP") submitted a timely report indicating that it supported the request for special exception relief under § 205 and variance relief from parking under § 2101. (Exhibit 34.) The District Department of Transportation ("DDOT") submitted a timely report of "no objection" to the application. (Exhibit 35.) The OP report indicated that OSSE stated in an email to OP dated April 8, 2015, that it had no comments on the application. (Exhibit 34.)

A letter in support was submitted to the record from the Single Member District ("SMD") ANC 5E09. (Exhibits 26 and 28.) The SMD also testified in support at the hearing. Seven other letters of support were submitted to the record. (Exhibit 8.) Testimony in support was also given by six staff members as well as a parent and resident of Franklin Commons.

Email correspondence in opposition to the application was submitted to the record from Gwen Southerland, President, Franklin Commons Tenant & Civic Association. (Exhibits 30, 31, and 37.) A request for party status in opposition was filed by the Franklin Commons Tenant & Civic Association (Exhibit 43); however, the Board denied that request as untimely filed. Ms. Southerland testified in opposition at the public hearing.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 from the parking requirements under § 2101.1, to continue operation of a child development center consisting of 50 children and 14 staff in the R-3 District. The parties to the application were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for a variance under § 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty or undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under §§ 3104.1 and 205, to continue operation of a child development center consisting of 50 children and 14 staff in the R-3 District. No parties appeared at the public hearing in opposition to the

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application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 205, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED**.³

VOTE: 3-0-2 (Marnique Y. Heath, Lloyd L. Jordan, and Jeffrey L. Hinkle to APPROVE; Zoning Commission member not participating; one Board member seat vacant.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:

SARA A. PARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 28, 2015

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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

³ The Board requested that the Applicant supplement the record with documentation of the four parking spaces leased from the Property Owner. The Applicant submitted the requested documentation. (Exhibit 45.)

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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.