

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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

HEARING DATES: December 22, 2009 and January 19, 2010

DECISION DATES: February 9² and 16, 2010

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by a letter, dated March 30, 2009, from the Zoning Administrator stating that the Applicant's Certificate of Occupancy application to use the subject premises as a child development center for fifty (50) children, ages infant to twelve (12) years old, with fourteen (14) staff was denied due to the need for Board of Zoning Adjustment approval. (Exhibit 4).

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) 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. The ANC filed a report, dated December 18, 2009, indicating that the ANC voted unanimously in support of the application on November 12, 2009, at a duly-

¹ The Application was amended to include area variance relief from the off-street parking requirements for the proposed child development center use under 11 DCMR § 2101.1. The Board's approval of the variance reduced the required spaces from four spaces to none.

² The Special Public Meeting that was to be held on February 9, 2010 was postponed to February 16, 2010. No deliberations took place on February 9, 2010.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18013

EXHIBIT NO. 38

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noticed, regularly-scheduled meeting at which a quorum was present OP submitted a timely report recommending approval of the application (Exhibit 33) The District of Columbia Office of the State Superintendent of Education also submitted a letter, dated November 6, 2009, in support of the application (Exhibit 32)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the 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

In addition, as directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 205 No parties appeared at the public hearing in opposition to this 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 OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205, 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 requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law It is therefore **ORDERED** that this application be **GRANTED** **SUBJECT TO THE FOLLOWING CONDITION:**

1. This approval shall be for a term of five (5) years

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VOTE: 4-0-1 (Meridith H Moldenhauer, Marc D Loud, Shane L Dettman, Michael G Turnbull to APPROVE. One Board member not participating, nor voting)

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

The majority of the Board members approved the issuance of this order

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FEB 22 2010

FINAL DATE OF ORDER: _____

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

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, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON

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ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.