

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18074 of Shirley H. Cox, pursuant to 11 DCMR § 3104.1, for a special exception under § 205 to establish a child development center (15 children and 3 staff) in the R-2 District at premises 3008 K Street, S.E. (Square 5482, Lots 8 and 9).¹

HEARING DATE: June 22, 2010
DECISION DATES: July 13 and August 3, 2010

DECISION AND ORDER

This application was filed on March 25, 2010 by Shirley Cox (the “Applicant”), the owner of the property that is the subject of the application. The application requests a special exception under § 205 of the Zoning Regulations to establish a child development center for 15 children and three employees in the R-2 District at 3008 K Street, S.E. (Square 5482, Lots 8 and 9). Following a public hearing, the Board of Zoning Adjustment (the “Board”) voted to grant the requested special exception.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 5, 2010, the Office of Zoning (“OZ”) provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Department of Health; Advisory Neighborhood Commission (“ANC”) 7A, the ANC in which the subject property is located; and ANC Single Member District 7A07. Pursuant to 11 DCMR § 3112.14, on April 15, 2010, OZ mailed letters providing notice of the hearing to the Applicant, ANC 7A, and the owners of all property within 200 feet of the subject property. Notice was also published in the *D.C. Register* on April 16, 2010. (57 DCR 3260.)

¹ The application originally requested approval of a child development center for 18 children and three staff but the maximum enrollment was revised to 15 children by the Applicant at the public hearing. The public hearing notice described the subject property as Lot 8 in Square 5482, but the application concerns two abutting lots – Lots 8 and 9 – which are owned by the Applicant and have been improved with a single building formerly used as a one-family detached dwelling.

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Party Status. The Applicant and ANC 7A were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Deborah Hinkle, a resident of the 3000 block of K Street, S.E., near the subject property.

Applicant's Case. The Applicant provided evidence and testimony describing the planned child development center, and asserted that the application satisfied all requirements for approval of the requested special exception.

OP Report. By memorandum dated June 15, 2010, OP recommended approval of the application for 15 children based on OP's conclusion that the Applicant's project met the standards for approval under § 223, subject to a positive recommendation by the Office of the State Superintendent of Education ("OSSE").

OSSE Report. By memorandum dated June 25, 2010, OSSE's Division of Early Childhood Education, Compliance and Integrity Division, Child Care Licensing Unit recommended approval of the application.

ANC Report. The Board did not receive a report from ANC 7A in this proceeding. The representative of Single Member District 7A07 submitted a letter in support of the application, stating that the subject property will be an ideal location for the proposed child development center, which will provide a needed service for the neighborhood.

Party in opposition. The party in opposition presented testimony from witnesses who live in the vicinity of the subject property. According to the party in opposition, the proposed child development center would create adverse impacts on the use of neighboring property due to traffic congestion, parking, and noise associated with an outdoor play area. (Exhibit 26.)

Persons in opposition. The Board heard testimony and received letters from persons in opposition to the application, including the Dupont Park Civic Association. The letters and testimony generally asserted that the proposed child development center would not satisfy the applicable zoning requirements but would increase taxes, create traffic and parking issues for neighborhood residents, and cause commercialization in the neighborhood, resulting in litter and signs that would alter the look of the neighborhood. (Exhibits 20 and 21.)

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 3008 K Street, S.E., on the north side of the street in a triangular square bounded by 30th Street, K Street, and Massachusetts Avenue (Square 5482, Lots 8 and 9).

2. The subject property is an interior lot generally rectangular in shape. The lot has 50 feet of frontage along K Street. Its depth is 60 feet along the east property line and approximately 70 feet along the west property line. The rear lot line abuts a public alley that is 10 feet wide and runs generally east-west from K Street to 30th Street.
3. The subject property is improved with a one-story structure built as a one-family dwelling. The lot is bounded by chain link or wood fences between four and six feet high, and is also landscaped with some shrubbery and ivy.
4. The surrounding neighborhood is characterized predominantly by moderate-density residential uses. Properties to the east, west, and south of the subject property are generally developed with one-family detached dwellings. A two-story apartment building abuts the subject property to the north.
5. K Street in the vicinity of the subject property is a lightly traveled residential street, and is one-way eastbound. Parking is permitted on both sides of the street.
6. A child development center is located within 1,000 feet of the subject property, to the east at Randle Circle. Vehicular circulation associated with the existing facility primarily uses Randle Circle and Minnesota Avenue.

The Applicant's Project

7. The Applicant proposes to operate a child development center for 15 children, ages two to five years, with three employees. The hours of operation will be 6:30 a.m. to 6:30 p.m., Monday through Friday.
8. The Applicant plans to renovate the interior of the one-family dwelling for use as a child development center by creating activity rooms, a children's bathroom, and locker room as well as a room for food preparation and eating. The exterior of the building will not be affected by the interior renovations.
9. Drop-off and pick-up of children attending the child development center will be accomplished using on-street parking in the vicinity of the subject property. Employees of the child development center will assist with getting children into or out of vehicles and walking them to and from the facility. The supply of on-street parking spaces is sufficient around the subject property to accommodate the drop-off and pick-up process safely and without creating adverse traffic or parking impacts.
10. The play area for the child development center will be located in the yard at the subject property. A bamboo screen, six feet high, has been installed on the fence between the subject property and the adjoining residence to help screen the play area.

11. The Applicant will create one parking space at the rear of the subject property, accessible from the alley.

Harmony with Zoning

12. The R-2 District consists of those areas that have been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development. Areas zoned R-2 are expected to continue to contain some small one-family detached dwellings. (11 DCMR § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 205 of the Zoning Regulations to operate a child development center for 15 children and three employees in the R-2 District at 3008 K Street, S.E. (Square 5482, Lots 8 and 9). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (11 DCMR § 3104.1.)

Pursuant to § 205, use as a child development center may be permitted as a special exception in the R-2 District, subject to certain provisions. These provisions include that the center must be capable of meeting all applicable code and licensing requirements; must be located and designed so as not to create objectionable traffic conditions or unsafe conditions for picking up and dropping off children in attendance; and must provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors. In addition, the center, including any outdoor play space, must be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. Finally, the Board may approve one child development center in a square or within 1,000 feet of another child or elderly development center or adult day treatment facility only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

Based on the findings of fact, the Board finds that the requested special exception satisfies the requirements of §§ 205 and 3104.1. OSSE recommended approval of the application, indicating that the licensure capacity of the Applicant's child development center will be calculated based on the Certificate of Occupancy issued for the facility as well as the requirements of 29 DCMR Chapter 3, Child Development Facilities. The Applicant's child development center will be located and designed so as not to create objectionable traffic conditions or unsafe conditions for picking up and dropping off children in attendance, in light of the relatively small size of the

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facility and its location on a one-way residential street with available curbside parking, and given that the times that the children will be dropped off and picked up will be staggered, depending on their parents' schedules.

The Applicant's child development center will provide one parking space at the rear of the subject property, thereby satisfying the off-street parking requirement set forth in § 2101.1 of the Zoning Regulations of one space for every four employees. The Board does not find that additional off-street parking would be required to meet the reasonable needs of teachers, other employees, and visitors to the child development center.

The proposed child development center, including its planned outdoor play space in the yard, will be located and designed so as not to create objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. The relatively small size of the facility, the fencing and other screening measures implemented by the Applicant, and the adult supervision of the children by employees of the child development center will ensure that the facility will be operated without creating objectionable noise, activity, visual, or other conditions.

With regard to the child development center currently operating within 1,000 feet of the subject property, the Board agrees with OP's conclusion that vehicular traffic generated by the two facilities, existing and proposed, will not have a negative impact on the neighborhood surrounding the subject property. The Board finds no evidence to suggest that the cumulative effect of the two child development centers will have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

The Board was not persuaded by the testimony of the party in opposition that approval of the requested special exception, subject to the conditions adopted in this Order, will tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)).) In this case, ANC 7A did not submit a report or participate at the hearing and thus did not express any issues or concerns to which the Board can give great weight.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 205 of the Zoning Regulations to operate a child development center for 15 children and three employees in the R-2 District at 3008 K Street, S.E. (Square 5482, Lots 8 and 9). Accordingly, it is **ORDERED** that the application (pursuant to Exhibit 7 - Main Level Floor Plan) is hereby **GRANTED**, subject to the following **CONDITIONS**:

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1. Approval shall be for a period of **THREE (3) YEARS**, beginning on the date upon which this order became final.
2. The hours of operation of the child development center shall not exceed 6:30 a.m. until 6:30 p.m., Monday through Friday.
3. The maximum enrollment shall not exceed 15 children, and the number of staff shall not exceed three.
4. The Applicant shall maintain a screening buffer along the entire length of the eastern property line of the subject property.
5. The Applicant shall not install signage on the property, including on the building, indicating the location of a child development center.
6. The Applicant shall maintain the property in a clean and orderly condition, including the regular upkeep of all landscaping, regular removal of trash, and proper storage of play equipment when the child development center is not in operation.

VOTE: **3-0-2** (Nicole C. Sorg, Shane L. Dettman, and Peter G. May (by absentee vote) to Approve; Meridith H. Moldenhauer not present, not voting; one Board member (vacant) not participating)

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

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

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 23 2010

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-

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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.

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As Director of the Office of Zoning, I hereby certify and attest that on DEC 23 2010, 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:

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ATTESTED BY:


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