

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18084 of Washington Hebrew Congregation, pursuant to 11 DCMR § 3104.1, for a special exception for an expansion of an existing child development center (133 children and 30 staff) under section 205, in the R-1-B District at premises 3935 Macomb Street, N.W. (Square 1798, Lot 28).¹

HEARING DATE: July 20, 2010

DECISION DATE: July 20, 2010

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5).

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”) 3C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C filed a timely letter and resolution, dated June 22, 2010, in support of the Applicant’s project. The ANC’s resolution indicated that at a duly-noticed and scheduled public meeting on June 21, 2010 with a quorum present, the ANC voted 8:0 to support the application. The ANC found that the existing child development center does not adversely impact the community and that the expanded use would not be likely to adversely impact the community. (Exhibit 31). The Office of Planning (“OP”) submitted a timely report recommending approval of the application. (Exhibit 34). The Office of State Superintendent of Education recommended that the application be approved and indicated that all licensing requirements had been met. (Exhibit 29).

¹ The Applicant clarified its original application thusly: 1) the Applicant is seeking to increase the maximum number of staff to 30 (from 24 currently); 2) the Applicant is seeking a maximum enrollment of 133 students (from 95 currently); 3) the site has 65 off-street parking spaces, not 66; 4) the Applicant requests that the hours of operation be approved as 7:30 a.m. to 3:30 p.m. to comport with the Applicant’s current license. (Exhibit 33).

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A letter was filed with the Board from Mr. Paul Coughlin, Jr., who lives across the street from the entrance to the school's parking lot, and who raised concerns that the increase in the student body would serve to exacerbate traffic jams and lead to additional risks to the children. He asked if any study had been undertaken to assess the current traffic situation and the effect that additional students would have on it when they are picked up and dropped off.² (Exhibit 35).

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 a special exception under § 205. No parties appeared at the public hearing in opposition to this application.³ 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, 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 WITH THE FOLLOWING CONDITIONS**:

1. This approval shall be for a term of **TEN (10) YEARS**, beginning on the date upon which the order became final.
2. The maximum number of children enrolled shall not exceed 133.
3. The maximum number of staff shall not exceed 30.
4. The children's ages shall range from two to five years.
5. The hours of operation shall be 7:30 a.m. to 6:30 p.m., Monday through Friday.

² At the hearing the Board engaged in colloquy with the Applicant and OP regarding Mr. Coughlin's letter. The Applicant indicated that it had a traffic consultant, Mr. David A. Nelson, P.E., P.T.O.E. President, Street Traffic Studies, Ltd. who prepared a traffic study. (Exhibit 33). The Board also noted that both OP and the ANC specifically found that all drop-off and pick-up of students takes place off-street within the Applicant's property, there is ample space on the site for this activity, and it does not cause a backup of traffic onto neighborhood streets. (Exhibits 31 and 34).

³ Mr. Coughlin did not testify nor did he request party status. The Board considered his letter, but did not find it persuasive, given the ANC's support of the project and the ANC's and OP's findings specifically on the traffic issue he raised.

6. The center's executive director shall meet with the local Advisory Neighborhood Commission no less than once per year in order to assess and address any concerns of area residents that may arise as a result of the operation of the center.
7. The center shall make available to staff and parents information about public transportation options in the area.

VOTE: **3-0-2** (Meridith H. Moldenhauer, Konrad W. Schlater, Shane L. Dettman to APPROVE. Nicole C. Sorg and the third Mayoral appointee (vacant) neither 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

FINAL DATE OF ORDER: JUL 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 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

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ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON 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.

ESB

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JUL 23 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

A handwritten signature in dark ink, appearing to read "Jamison L. Weinbaum", is written over a horizontal line.

JAMISON L. WEINBAUM
Director, Office of Zoning

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