

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18148 of Little Samaritan Child Development Center, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to continue the operation of an existing child development center, last approved by BZA Order No. 17338, dated June 29, 2005, for 50 children and 16 staff under section 205, and a variance from the off-street parking requirements under subsection 2101.1, in the R-3 District at premises 5100 E Street, S.E. (Square 5315, Lot 36).¹

HEARING DATES: December 7, 2010 and January 25, 2011
DECISION DATE: January 25, 2011

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated June 16, 2010, from the Zoning Administrator stating that a review of the Applicant's application for a Certificate of Occupancy to continue to use the property as a child development center in a R-3 District required Board of Zoning Adjustment ("Board") approval.² (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") 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E, which is automatically a party to this application. ANC 7E filed a report, dated November 15, 2010, in support of the Applicant's project. The ANC's letter indicated that at a duly noticed public meeting with a quorum present, the ANC voted to approve the motion unanimously. (Exhibit 26.) The Office of Planning ("OP") submitted a timely report recommending approval of the application. OP recommended that the Board grant a continuation of the special exception relief previously granted under BZA Order No. 17338 for a child

¹ The Applicant amended its application to include variance relief from § 2101.1 for four off-street parking spaces. (Exhibit 32). The Board granted the request to amend the application pursuant to its authority under § 3100.5. At the December 7, 2010 hearing, the Board requested that the case be re-advertised for the additional variance relief and continued the hearing to January 25, 2011.

² The last Certificate of Occupancy expired on June 29, 2010. (Exhibit 7.)

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development center for 50 children and 16 staff subject to the previous approval conditions, except with no expiration date. OP further recommended that a variance be explicitly granted from the four off-street parking spaces required for the use. (Exhibit 28.) The Office of State Superintendent of Education also recommended that the application be approved. (Exhibit 25.)

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 as well as to establish the case pursuant to § 3103, for a variance under § 2101.1. 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proving under 11 DCMR §§ 3103 and 2101.1 that there exists an exceptional or extraordinary condition or situation related to the property that creates a practical difficulty 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 Zoning Map.

Also 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. Enrollment shall be limited to 50 children.
2. The maximum number of staff shall be 16.
3. The ages of the children shall range from six weeks to 12 years old.
4. The days and hours of operation shall be Monday through Friday, 7:00 a.m. to 6:00 p.m.
5. One staff person (at minimum) shall be available at the front of the building to assist when the children are dropped off or arrive at the child development center.

VOTE: 4-0-1 (Meridith H. Moldenhauer, Anthony J. Hood, Nicole C. Sorg, and Jeffrey

VOTE: 4-0-1 (Meridith H. Moldenhauer, Anthony J. Hood, Nicole C. Sorg, and Jeffrey L. Hinkle to APPROVE. No other Board member (vacant) participating, or 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: FEB 02 2011

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 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.

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As Director of the Office of Zoning, I hereby certify and attest that on **FEB 02 2011**, 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:

Remeca Mashack
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