

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18190 of ASG Group Inc. – Esther’s Childcare and Development Center, pursuant to 11 DCMR § 3104.1, for a special exception under § 205 to permit a child development center (45 children, ages five years and younger, and 12 staff) in the R-1-B District at premises 3015 25th Street, N.E. (Square 4288, Lot 820).

HEARING DATE: March 29, 2011
DECISION DATE: April 12, 2011

DECISION AND ORDER

This application was submitted January 10, 2011 by Akinola and Oluseyi George, the owners of the property that is the subject of the application, on behalf of ASG Group, Inc., doing business as Esther’s Childcare and Development Center (“Applicant”). In accordance with a memorandum dated September 14, 2010 to the Applicant from the Zoning Administrator, the application was filed pursuant to 11 DCMR § 3104.1 for a special exception under § 205 to permit a child development center with 45 children and 12 employees in an existing structure located in the R-1-B District at 3015 25th Street, N.E. (Square 4288, Lot 820).¹ (Exhibit 1.) Following a public hearing, the Board of Zoning Adjustment (“Board”) voted 4-0-1 on April 29, 2011 to deny the application.

Preliminary Matters

Notice of Application and Notice of Public Hearing. By memoranda dated January 13, 2011, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 5; Advisory

¹ The referral memorandum from the Zoning Administrator reflected the Applicant’s original proposal to operate a child development center at the subject property for 60 children and 15 employees, and mistakenly described the subject property as being zoned R-4. The memorandum also indicated that the proposed use required approval of a variance from § 2101.1 to permit the planned child development center without the required parking spaces, but the plans submitted by the Applicant to the Board reflected that three parking spaces – the minimum required under the Zoning Regulations for a child development center with 12 employees – would be provided in the rear yard of the subject property. Therefore, the Applicant did not seek a parking variance along with the requested special exception.

BZA APPLICATION NO. 18190
PAGE NO. 2

Neighborhood Commission (“ANC”) 5B, the ANC for the area within which the subject property is located; and the single-member district ANC 5B02.

A public hearing was scheduled for March 29, 2011. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on January 24, 2011 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 5B. Notice was published in the *D.C. Register* on January 28, 2011. (58 DCR 801.)

Requests for Party Status. In addition to the Applicant, ANC 5B was automatically a party in this proceeding. The Board granted requests for party status in opposition to the application from Sylvia Tapscott, a resident of the 3000 block of 25th Street, and from Kindall Hudgins and Eric Rice, who live in the 2500 block of Irving Street. The Board denied requests for party status in opposition to the application from Chelette Johnson and Michael Tyson, who were not present at the hearing.

Applicant’s Case. The Applicant provided testimony and evidence describing their plans to establish a child development center at the subject property in accordance with the requirements of § 205. The Applicant indicated that, for the past three years, they have operated another child development center, which is located at 1927 Gales Street, N.E., and has a capacity of 22 children and seven employees, and are now seeking to expand their operations.

Government Reports. By memorandum dated March 22, 2011 and through testimony at the public hearing, OP recommended approval of the requested special exception subject to several conditions pertaining to the maximum number of children and employees at the child development center, its hours of operation and use of an outdoor play area, parking, and staff assistance with the drop-off and pick-up of children at the facility. According to OP, DDOT also reviewed the application and did not express any concerns that the proposed child development center would impact congestion or public safety.

By memorandum dated February 15, 2011, the Office of the State Superintendent of Education, Division of Early Childhood Education, Compliance and Integrity Division, Child Care Licensing Unit, recommended approval of the application to benefit the “growing demand for licensed child care slots.” (Exhibit 24.) The memorandum stated that the licensure capacity of the facility would be calculated based on its certificate of occupancy and the requirements of Title 29 DCMR, Chapter 3, Child Development Facilities Regulations.

ANC Report. By letter dated March 21, 2011, ANC 5B indicated that, at a public meeting held February 3, 2011 with a quorum present, the ANC voted unanimously not to recommend approval of the application, citing concerns about the impact that the drop-off and pick-up of children at the facility would have on traffic and the safety of the children as well as the close proximity of the child development center to adjacent homes and its impact on property values.

Parties in opposition. The parties in opposition to the application asserted that the proposed child development center would not satisfy the requirements of the Zoning Regulations because the

BZA APPLICATION NO. 18190
PAGE NO. 3

use would create adverse traffic and parking impacts, especially given the narrow nature of the street and the existing demand for parking generated by residents. The parties in opposition also objected to the large number of children and employees anticipated at the proposed child development center, citing noise and other adverse impacts on the use of nearby residential properties, especially in light of the Applicant's plans to operate the facility until midnight.

Persons in opposition. The Board received letters and heard testimony from several persons in opposition to the application. The letters and testimony generally expressed concerns that the residential character of the neighborhood would be compromised by a business, that the drop-off and pick-up of children at the proposed child development center would cause traffic congestion and unsafe conditions on a narrow street, that the increased traffic and number of children and staff associated with the facility would increase demand for parking on the narrow neighborhood streets, and that operation of the child development center would adversely affect the use of nearby residential properties, in part because of noise associated with the use of the planned outdoor play area.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is a rectangular parcel located on the east side of 25th Street, N.E., near its intersection with Irving Street (Square 4288, Lot 820). The lot is approximately 45 feet wide and 126 feet deep, and has an area of 5,680 square feet.
2. The subject property is improved with a two-story building constructed and formerly used as a one-family detached dwelling. The property is nonconforming with respect to its side yard, as the northern side yard is approximately five feet, where a minimum of eight is required. (11 DCMR § 405.9.) The southern side yard is approximately 19 feet wide and contains a driveway.
3. Properties in the vicinity of the subject property are improved primarily with two-story detached dwellings, and the surrounding neighborhood character is predominately moderate-density residential.
4. The portion of 25th Street, N.E. in the vicinity of the subject property is a relatively narrow two-way street. Parking is permitted on both sides of the street and is not subject to residential parking restrictions.² Many residences in the vicinity lack off-street parking or share a driveway with a neighboring property, so that many residents of the neighborhood currently park their vehicles on the street.

² Generally speaking, when a portion of a block has been designated as being subject to residential parking restriction, only cars displaying residential parking stickers may park during the hours designated in the regulations. (18 DCMR § 2411.) Such stickers are issued "only to the owner or the operator of a motor vehicle who resides on property abutting a street designated as a residential permit parking block." (18 DCMR § 2413.3.)

BZA APPLICATION NO. 18190
PAGE NO. 4

5. Public transportation options in the vicinity of the subject property include Metrobuses operating on Rhode Island Avenue and on 24th, 26th, and Franklin Streets.

The Applicant's Proposal

6. The Applicant proposes to establish a child development center for 45 children,³ ages five and younger, and 12 employees at the subject property.
7. The hours of operation for the child development center would be 7:00 a.m. to 6:00 p.m., Monday through Friday, with "nontraditional hours" of 6:00 p.m. to 12:00 a.m. for approximately 10 to 25 % of the children enrolled at the facility.
8. The Applicant anticipated that children would be dropped off at the facility between 7:00 a.m. and 9:05 a.m., and picked up before 6:00 p.m., except for those staying at the child development center during the nontraditional hours. At least one employee of the child development center would be available at the curbside to assist with drop-offs and pick-ups.
9. The Applicant would create three parking spaces at the rear of the subject property and to extend the driveway to provide access to the parking area.
10. The Applicant planned to remove an existing rear deck, and in its place install structural metal egress stairs at the rear of the building. A fence would be installed around the perimeter of the subject property where necessary to supplement an existing fence.
11. The Applicant also proposed to create an outdoor play area, approximately 13 by 26 feet, in the rear yard between the egress stairs and the parking area. The play area would be used by groups of eight to 12 children at a time between 9:00 a.m. and 1:00 p.m. The child development center would not utilize any off-site play area.

Harmony with Zoning

12. The subject property is zoned R-1-B. The R-1 District is "designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes." (11 DCMR § 200.1.) The use regulations applicable in Residence Districts "are intended to stabilize the residential areas and to promote a suitable environment for family life," where "only a few additional and compatible uses" are permitted. (11 DCMR § 200.2.)

³ Although the Applicant's written submission included a statement that "[t]here will be no more than 45 enrolled children at *any one time* in the center" (emphasis added), the Board considered the application as a request for a maximum enrollment of 45 children. Under "Nature of Relief Sought," the Applicant requested approval of "a child development center *for up to* 45 children...." (emphasis added). (Exhibit 4.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 205 to permit a child development center with 45 children and 12 employees in an existing structure located in the R-4 District at 3015 25th Street, N.E. (Square 4288, Lot 820). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001) 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. *See* 11 DCMR § 3104.1.

Pursuant to § 205, use as a child development center may be permitted in an R-1 District if approved by the Board as a special exception under § 3104, subject to certain requirements. The requirements include that the center must be capable of meeting all applicable code and licensing requirements, and must provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors. A child development center must be located and designed to create no objectionable traffic condition or unsafe condition for picking up and dropping off persons in attendance, and must not create objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. (11 DCMR § 205.2-205.5.)

The Applicant failed to meet its burden to prove that the proposed child development center would operate at the subject property without creating objectionable traffic conditions or unsafe conditions for dropping off and picking up children in attendance. The parties in opposition presented photographs illustrating that 25th Street is a relatively narrow street with two-way traffic and vehicles parked on both sides of the street. The Applicant did not present persuasive testimony or evidence to demonstrate that the child development center would not create traffic congestion, particularly with respect to the drop-off and pick-up of children at the facility. The location lacks any area where vehicles coming to the facility could pull over and safely drop off or pick up children, even if those vehicles arrived at staggered intervals and employees of the child development center would be present at the curb to assist drivers, as the Applicant stated. With a proposed enrollment of 45 children, the child development center would likely generate a high number of vehicle trips to and from the child development center, particularly during the morning and evening peak periods. Especially given the narrow nature of the street and existing demand for on-street parking, the Board concludes that the additional traffic and parking demand generated by the Applicant's proposed child development center would create objectionable traffic conditions and unsafe conditions for the children in attendance.

The Board also finds that the Applicant's proposal to provide three parking spaces at the subject property would not be sufficient to meet the reasonable needs of teachers, other employees, and visitors to the proposed child development center. Although the site is located near several Metrobus stops and some children may arrive on foot, with a maximum enrollment of 45 children and 12 employees the child development center would likely generate a significant volume of traffic to the site, and many drivers would seek to park near the facility during its

BZA APPLICATION NO. 18190
PAGE NO. 6

operating hours. As described by the parties in opposition, off-street parking is limited in the vicinity of the subject property, where many residences lack driveways or utilize shared driveways, so that many residents park their vehicles on the street. The neighborhood surrounding the subject property is moderate-density residential in character and lacks commercial garages or other parking lots that could supplement the three spaces provided for employees and visitors to the Applicant's proposed child development center.

Similarly, the Applicant failed to meet its burden to prove that the proposed child development center, including its planned outdoor play space, would be located and designed so that there would be no objectionable impacts on adjacent or nearby properties due to noise, activity, or other objectionable conditions. The center would be in operation for long periods each day, opening at 7:00 a.m. and not closing until midnight, and a relatively large number of people – as many as 45 children and their parents or guardians, 12 employees, and any additional visitors – would be traveling to and from the facility each weekday. This level of activity would be much greater than that experienced at surrounding properties, most of which are one-family detached dwellings, and would occur throughout the day and evening, from the early morning until late at night. The Applicant did not satisfactorily address concerns regarding potential noise impacts associated with vehicles traveling to and from the child development center, or with the use of the outdoor play area, which would be in close proximity to neighboring dwellings and, as proposed, would be used continuously by groups of as many as 12 children for four hours every day.

The Board is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to the recommendations of OP. In this case, OP recommended approval of the application subject to nine conditions intended to mitigate potential adverse impacts associated with the operation of the proposed child development center. For the reasons discussed above, the Board does not concur with the recommendation of OP that the requested zoning relief should be granted. The Board does not find that the conditions proposed by OP would be sufficient to ensure that the operation of the proposed child development center at the subject property meets the general and specific criteria set forth in § 3104.1 and § 205.2 through 205.5.

Section 13(b) (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)(3)(A)) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. The Board agrees with ANC 5B's resolution in opposition to the application that the proposed child development center would create adverse impacts particularly with respect to traffic and safety arising from the drop-off and pick-up of children at the facility, and to the close proximity of the child development center to adjacent homes.

Based on the findings of fact, and having given great weight to the recommendations of OP and to the issues and concerns of ANC 5B, the Board concludes that the requested zoning relief cannot be approved in such a way that the Applicant's project is not likely to become objectionable to adjoining and nearby property and would not tend to affect adversely the use of

neighboring property. For the reasons stated above, the Board concludes that the Applicant has not satisfied the requirements for a special exception under §§ 205 and 3104.1 to establish a child development center with 45 children and 12 staff members in an existing structure located in the R-1-B District at 3015 25th Street, N.E. (Square 4288, Lot 820). Accordingly, it is hereby **ORDERED** that the application is **DENIED**.

VOTE: 4-0-1 (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Konrad W. Schlater (by absentee ballot) voting to Deny; Lloyd L. Jordan not participating)

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

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

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: NOV 21 2011

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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Board of Zoning Adjustment



BZA APPLICATION NO. 18190

As Director of the Office of Zoning, I hereby certify and attest that on NOV 21 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 or delivered by electronic mail in the case of those ANC's and SMDs that have opted to receive notices thusly, 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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