

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18226 of Boys Town Washington, D.C., Inc., pursuant to 11 DCMR § 3104.1, for a special exception to construct and operate a youth residential care home for up to six (6) children under section 303, in the R-2 District at premises 4801 Sargent Road, N.E. (Square 3977, Lot 134).

HEARING DATE: June 21, 2011

DECISION DATE: June 21, 2011

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application of Boys Town Washington, D.C., Inc. (the "Applicant") was accompanied by a memorandum, dated April 1, 2011, from the Zoning Administrator ("ZA"). At the Applicant's request, the ZA provided guidance on the specific zoning relief that would be required from the Board of Zoning Adjustment ("Board" or "BZA") for the Applicant's development proposal. In so doing, the ZA reviewed the zoning history of the subject property. The ZA noted that this application would allow the construction of a new one single-family dwelling to be used as a youth residential care home, as that term is defined in 11 DCMR § 199.1, to house no more than six children and two staff. The new house would be located on the same site and be nearly identical in size and configuration as four existing homes that were approved by special exception in BZA Order No. 16531 issued December 21, 2000.¹ Based on the analysis and determination in BZA No. 16531, the ZA concluded that special exception relief under § 303 would be similarly appropriate in this case, and would, if granted by the Board, serve to modify

¹ The ZA indicated that a separate "short-term" youth residential care home (formerly termed an emergency shelter) is located on the same property under a separate certificate of occupancy. That separate home was approved in BZA Order No. 15805 on August 31, 1993, and was not addressed in BZA Order No. 16531 nor in this order.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18226

EXHIBIT NO. 33

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the existing approval under BZA Order No. 16531², by adding another youth residential care home on the property.³ (Exhibit 6.)

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”) 5A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5A, which is automatically a party to this application. ANC 5A filed a report, dated May 30, 2011, which indicated that at a duly noticed, regularly scheduled public meeting on April 27, 2011, with a quorum of Commissioners present, the ANC voted to support the application. However, the report did not indicate the vote tally at the ANC meeting. The report did indicate that the ANC authorized Commissioner Timothy Thomas, Single Member District (“SMD”) 5A08, to present the report and to act for the ANC on the matter before the Board. (Exhibit 27.) Commissioner Timothy Thomas testified at the Board’s public hearing that the vote at the ANC’s public meeting on April 27, 2011 was 10:2, with 10 of the 12 Commissioners present and voting in support of the application.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application with eight conditions. (Exhibit 29.)

Two neighbors, Keisha Warner, 1259 Delafield Place, N.E., and Joyce Taylor, 4801 South Dakota Avenue, N.E., testified about their concerns regarding the application. Ms. Warner testified that while she was concerned about potential changes and shifts to the water table and other, primarily environmental impacts on the land which could affect her property, she was not against the Applicant’s mission. Upon the Board’s questioning, Ms. Warner stated that she had attended community meetings and had spoken with the Applicant’s representative and was not going to oppose the project, as the new home and parking lot were on the opposite side of the site from where her house is situated.⁴

Ms. Taylor also testified about her concerns regarding public safety. She indicated that she had observed increased police activity and was concerned as her property backs onto the Applicant’s land. She testified that she had observed youth behind her house and cutting across the Applicant’s property. She wanted to know more about the youth who were living in the

² The Board clarified that this is a new application which has the effect of modifying the prior, 10-year old order.

³ At the start of the hearing on the instant case, Board member Lloyd Jordan disclosed that, at the time that BZA Order No. 16531 was decided and building permits granted for those four now-existing homes, he was the Director of the Department of Consumer and Regulatory Affairs. No conflict was found and he continued to hear the case with the rest of the Board members present.

⁴ At the hearing, the Applicant’s architect indicated that the hills of which Ms. Warner spoke that were nearer to her property were created by the previous owner of the property, were stable, and were not able to be built upon. Another of the Applicant’s representatives testified that the Applicant, in conjunction with several of its neighbors, had recently fixed a retaining wall and also had some tree debris removed.

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Applicant's homes and how she could help. The Applicant responded to her concerns, indicating that the youth in its care came from both the child welfare and juvenile justice systems. In both types of cases, the police normally accompanied the youth to the facility. If a child was 15 minutes or more late in arriving back to the facility, that was considered late and the police were called. The Boys Town representative also stated that the youth in their care were mainly accompanied by staff to school and unaccompanied children should not be cutting through the property. The Applicant noted that sometimes children not in the Applicant's care cut through their property and the Applicant would call the police when it became aware of that trespassing. The Applicant's representative provided Ms. Taylor with his telephone number so that she could contact him. The Board encouraged the Applicant to continue to work with the neighbors and community.

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 relief under § 303. 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 report⁵ filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 303 and 3104.1, 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. The waiver will not prejudice the rights of any party and is appropriate in this case. It is therefore **ORDERED** that this application (pursuant to Exhibit 31 – Revised Site Plan⁶) is hereby **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant shall house no more than six youth in each of five youth residential care home building units pursuant to this order⁷, for a maximum of 30 youths.

⁵ The ANC report did not meet the requirements to give it great weight because the report did not indicate what the vote was at the meeting in April. However, as Commissioner Thomas testified that 10 of the 12 ANC Commissioners who were present and voting at the ANC's April meeting voted to support the application, the Board acknowledged the ANC's support of the project during its deliberations even though it could not give the report great weight.

⁶ The Board requested a revised site plan to show the 10 parking spaces on the site. (Exhibit 31.)

⁷ This order adds one additional home for up to six youths to the four already-existing homes on the site which were approved in a prior order, BZA Order No. 16531. Another earlier order, BZA Order No. 15805, also pertains to the same property.

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2. The Applicant shall maintain in good working condition the switching device on the cooling tower.
3. The Applicant shall continue to implement the Safety Plan.
4. The Applicant may amend the Safety Plan from time to time, as needed, following consultation with ANC 5A, the Advisory Community Liaison Committee, and the 5th District of the Metropolitan Police Department.
5. The Applicant shall maintain the landscaping of the property and provide appropriate shrubbery for privacy and fencing.
6. The Applicant shall continue to monitor the growth of trees along the property boundary lines and take all necessary or appropriate steps to protect against property damage resulting from their overgrowth.
7. The Applicant shall continue to convene the Advisory Neighborhood Liaison Committee on a not less than quarterly basis to provide an ongoing dialogue between the members of the community, the ANC, and Boys Town. The Committee shall report to the ANC annually.
8. The Applicant shall establish a SmartBenefits account for its employees.

VOTE: **4-0-1** (Nicole C. Sorg, Jeffrey L. Hinkle, Lloyd J. Jordan, and Greg M. Selfridge to GRANT; Meridith H. Moldenhauer not participating.)

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: **JUN 29 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 TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-

YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.