

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18335-A of Application of Washington Ethical Society, Motion for Modification of Condition No. 2 to Order No. 18335, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (40 children and 14 staff) under § 205, in the R-1-A District at premises 7750 16th Street, N.W. (Square 2745F, Lot 81).

HEARING DATE (original application):	April 17, 2012
DECISION DATE (original application):	April 17, 2012 (Bench Decision)
FINAL ORDER ISSUANCE DATE (original application):	April 26, 2012
HEARING DATE ON MODIFICATION:	April 9, 2013
MODIFICATION DECISION DATES:	March 5 and April 9, 2013

SUMMARY ORDER ON REQUEST FOR MODIFICATION

Background

On April 17, 2012, the Board of Zoning Adjustment (the “Board” or “BZA”) approved the application of the Washington Ethical Society (the “Applicant”). The Applicant’s original request was for a special exception to allow a child development center (40 children and 14 staff) under § 205, in the R-1-A District at premises 7750 16th Street, N.W. (Square 2745F, Lot 81).¹

BZA Order No. 18335, approving the original request, was issued April 26, 2012. (Exhibit 38.) As approved in BZA Order No. 18335, the approval allowed a child development center (“CDC”) with 40 children and 14 staff on-site, subject to conditions.

¹ The property and the child development center (“CDC”) use had been the subject of prior Board holdings. In 2009, the Board approved a CDC with 40 children and 14 staff, subject to conditions, with a three-year term ending May 30, 2012. (See, BZA Order No. 17896.) The property and its CDC use were the subject of two previous orders as well. (See, BZA Order Nos. 16590 and 12005.) While the original application in this case was advertised as requesting approval to establish a CDC, the application was actually a renewal application, as the Applicant was asking to continue operation of an existing CDC use in compliance with previously adopted conditions, other than that for the term which will be eight rather than three years, and with a neighborhood agreement (Exhibit 11), albeit with a different CDC provider. With this request for a modification to the underlying approval, the Applicant is adding a second CDC provider that will handle the infant care.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18335-A

EXHIBIT NO. 47

Board of Zoning Adjustment
District of Columbia
CASE NO.18335
EXHIBIT NO.47

Request for Modification of Condition No. 2 of Order No. 18335

On January 31, 2013, the Applicant, through the proprietor of Trusting Hands CDC, which is one of two CDCs that has a lease with the Applicant to operate a CDC on the Applicant's property, requested a modification to Order No. 18335, to change Condition No. 2 in that order so as to allow infant care. (Exhibit 41.) The motion also included a letter, dated January 31, 2013, from the Applicant affirming that Trusting Hands CDC had a lease with the Applicant and that the Applicant supported the request, thereby authorizing the request for the modification.

Currently, Condition No. 2 reads as follows: "The child development center shall enroll no more than 40 students, *ages one and a half to five years old.*" (italics added to show the language that the Applicant seeks to change.) The Applicant requested that the condition be modified to permit infants approximately six weeks old, as well as children ages one and a half to five years of age, to be cared for by Trusting Hands CDC, pursuant to § 3129 of the Zoning Regulations. (Exhibit 41.) The record indicates that the request for modification was served on all of the parties to the case: the Office of Planning ("OP") and Advisory Neighborhood Commission ("ANC") 4A, the affected ANC. (Exhibit 41.)

The Motion was placed on the Board's public meeting agenda for decision on March 5, 2013. Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. When the Board met to consider the motion on March 5, none of the parties to the original case had as yet filed comments nor did the Applicant attend the March 5th meeting.

Limited-Scope Public Hearing Required

Subsection 3129.7, states that "[a] request to modify other aspects of a Board order may be made at anytime, but shall require a hearing." At the decision meeting of March 5, 2013, the Board determined that the Applicant's modification request required a limited-scope hearing to review the request. The Board indicated that it had questions for the Applicant and the other parties and, by consensus, ordered the matter for a public hearing on April 9, 2013.

Subsequent to the March 5th public meeting but before the public hearing scheduled for April 9th, the Applicant and one of the other parties submitted written comments. OP submitted a report, dated April 2, 2013, recommending approval of the request to modify the condition, provided that the Applicant submit some additional information, namely, to indicate the number of infants to be served and whether changes would be required in the waste management operations due to the lower ages of some of the students to be served and, if so, how this would be managed. (Exhibit 43.) The affected ANC, ANC 2A, which was a party to the underlying case, did not submit a report regarding the motion nor did it attend the hearing.

The Applicant also submitted a letter dated April 2, 2013, stating again for the record that the Applicant authorized and supported the CDC's request to provide infant care and to have the

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condition changed to allow that to happen, citing the significant need for infant care in the neighborhood, as evidenced by focus groups with neighbors over the years. Additionally, the Applicant's letter clarified that Trusting Hands CDC would be sharing the Applicant's building with another, separate CDC (Kids Village, LLC). Kids Village, LLC has been serving children one and a half to five years of age and is already covered under the previous original Order. Once the condition is modified, Trusting Hands CDC would be providing infant care and would be using rooms on the north side of the building. The total number of children and staff permitted by the original underlying BZA approval would not change. The Neighborhood Agreement that already exists also would remain in effect. (Exhibit 44.)

The proprietor of Trusting Hands CDC and the Applicant's administrator both attended and testified at the hearing. At the hearing on April 9th, the Board asked how many infants would be served. The proprietor of Trusting Hands CDC testified that the CDC was qualified for up to 15 slots, based on the space. The Board also asked about how changes in the operations of the CDCs to allow infants would impact other operations in the building, i.e. waste management. The witnesses replied that should there be additional waste produced due to the infant care, that arrangements would be made for either an additional trash pick-up or an additional dumpster. Testimony was given that there was space in the back of the building for an additional dumpster, if needed. The Board asked OP if it was satisfied with the Applicant and the CDC's reply to which OP responded in the affirmative. The Applicant clarified that the two daycare centers would be located in rooms across the hall from one another. One is currently operating and the other, Trusting Hands CDC, is just beginning to operate. To questions of the Board members, the Applicant clarified that the total enrollment allowed of 40 applied to both centers. To questions of the Board, the Office of the Attorney General noted that the original Order approved the CDC use and that now there were two daycare operators on the property, one of which was appearing with the Applicant and with the Applicant's authority to ask for the modification to allow for infant care.

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 modification to the special exception under § 205 previously approved by the Board in BZA Case No. 18335, specifically Condition No. 2. No parties appeared at the public hearing in opposition to the 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 report filed in this case, the Board concludes that in seeking a modification to Condition No. 2 of Order No. 18335, the Applicant has met its burden of proof under 11 DCMR 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.

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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 for modification of Order No. 18335 is hereby **GRANTED AND CONDITION NO. 2 IS MODIFIED TO READ AS FOLLOWS:**

2. The child development center(s) shall enroll no more than 40 students, ages infant to five years old.

In all other respects Order No. 18335 and the conditions therein remain unchanged.

VOTE on Original Application (April 17, 2012): 5-0-0

(Lloyd J. Jordan, Michael G. Turnbull, Nicole C. Sorg, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle to APPROVE.)

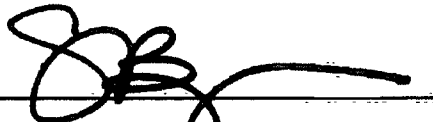
VOTE on Modification of Order No. 18335: 4-0-1

(Anthony J. Hood, Nicole C. Sorg, S. Kathryn Allen, and Jeffrey L. Hinkle to APPROVE; Lloyd J. Jordan, not present, not voting.)

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

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 18, 2013

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.