

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18392 of Betty J. Williams, pursuant to 11 DCMR § 3104.1, for a special exception under § 205 to permit a child development center (12 children and 2 teachers) in the R-2 District at premises 5350 Chillum Place, N.E. (Square 3751, Lot 138).

HEARING DATE: September 11, 2012

DECISION DATE: September 11, 2012

DECISION AND ORDER

This application was submitted April 11, 2012 by Betty J. Williams, the owner of the property that is the subject of the application ("Applicant"). In accordance with a memorandum dated February 2, 2012 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 12 children and two teachers in an existing structure located in the R-2 District at 5350 Chillum Place, N.E. (Square 3751, Lot 138).¹ Following a public hearing, the Board of Zoning Adjustment ("Board") voted 4-0-1 on September 11, 2012 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated April 13, 2012, the Office of Zoning sent notice of the application to the (i) Office of Planning ("OP") (Exhibit 18); (ii) District Department of Transportation ("DDOT") (Exhibit 20); (iii) Office of the State Superintendent of Education ("OSSE") (Exhibit 19); (iv) Councilmember for Ward 5 (Exhibit 23); (v) Advisory Neighborhood Commission ("ANC") 5A, the ANC for the area within which the subject property is located (Exhibit 21); and (vi) the ANC single member district ("SMD") 5A02.

¹ The application initially sought a special exception under § 2116.5, pertaining to an off-site parking space, as well as the special exception under § 205 for the proposed child development center. (Exhibit 1.) The Applicant subsequently withdrew the request for relief under § 2116.5, and this case was advertised only as a request for a special exception under § 205 to allow a child development center. (Exhibit 17.)

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18392

EXHIBIT NO. 36

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A public hearing was scheduled for September 11, 2012. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on June 1, 2012 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property (Exhibits 27 and 29), ANC 5A (including ANC-SMD 5A02), and the Councilmember for Ward 5. Notice was published in the *D.C. Register* on June 1, 2012. (59 DCR 6281-6283.)

Requests for Party Status. In addition to the Applicant, ANC 5A was automatically a party in this proceeding. No other parties requested the Board grant party status in favor of, or in opposition to, the application.

Applicant's Case. The Applicant described her plans to establish a child development center at the subject property in accordance with the requirements of 11 DCMR § 205.

Government Reports. By memorandum dated September 4, 2012 and through testimony at the public hearing, OP recommended approval of the requested special exception. (Exhibit 32.) OP's recommendation was subject to several conditions pertaining to the (i) term of the approval; (ii) maximum number of children at the child development center; (iii) number of staff at the child development center; (iv) child development center's hours of operation; (v) supervision and timing of outdoor activities; and (vi) use of off-site parking. As set forth more fully below, the Board adopted items (i) through (v) as conditions of its approval.

By memorandum dated August 27, 2012, the DDOT reviewed the application and determined that, based on the information provided, this Applicant's proposal "will have no adverse impacts on the travel conditions for the [District of Columbia]'s transportation network." (Exhibit 31.) Additionally, DDOT had no objection to the approval of the requested special exception.

By memorandum dated April 27, 2012, the District 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 the Applicant's home occupation permit and the requirements of Title 29 DCMR, Chapter 3, Child Development Facilities Regulations.

ANC Report. By letter dated August 11, 2012, ANC 5A indicated that, at a public meeting held from 7:30 p.m. to 9:30 p.m. on July 25, 2012 with a quorum present, the ANC approved a motion to support the increase in capacity for the Applicant's child development center by a vote of 6 for, 2 against, and no abstentions. (Exhibit 30.)

Parties in opposition. No parties at the Board's hearing were in opposition to the application.

Persons in support. The Board received a letter in support of the application from a neighbor residing at 5348 Chillum Place, N.E., who stated that the Applicant's operation of a child development home "has not caused any issues with regard to traffic or noise, or any other disruption, to the local community." (Exhibit 1, tab B.)

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Persons in opposition. No persons appeared at the Board's hearing in opposition to the application.

Other testimony. Patricia Roberts, ANC SMD 5A02 Commissioner, testified at the hearing. Although Commissioner Roberts did not generally object to the proposed expansion of the use, she felt that some issues needed to be clarified. First, she believed that a single parking space was not sufficient to meet the needs of the parents or caregivers dropping off children. She was also concerned that the size of the space to be devoted to the use was too small for 12 children. She was specifically concerned over the socialization issue, given that the age of the children could range from infants to 15 years. She was also worried that the two teachers might be called away to assist infants needing to use the bathroom and that this might leave the other children unattended. Finally, Commissioner Roberts felt that there should be no sign in the front yard and that to grant this special exception would encourage other such applications within the neighborhood, which would then dilute its residential character.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is a roughly rectangular parcel located on the south side of Chillum Place, N.E., approximately one block from its intersection with Jefferson Street, N.E. (Square 3751, Lot 138). The lot is 22 feet wide across the north border, 22.54 feet in to the south, 117.15 feet deep along the west border and 122.05 feet deep across the east border, and has an area of approximately 2,631 square feet.
2. The subject property is improved with a two-story plus basement one-family, semi-detached dwelling located along the eastern property line. A chain-link fence has been installed around the perimeter of the property. One parking space is located at the rear of the lot, accessible from a public alley. The space is large enough to accommodate two small vehicles and one SUV.
3. Properties in the vicinity of the subject property are improved primarily with two-story, semi-detached dwellings, and the surrounding neighborhood character is predominately residential. The LaSalle-Backus recreation center and Fort Circle Park are located within three blocks of the subject property.
4. The portion of Chillum Place, N.E. in the vicinity of the subject property is a two-way street. Parking is permitted on both sides of the street. The back sides of the residences are bordered by an alley. Most residents have a form of off-street parking accessed through the alley, though many residents of the neighborhood currently park their vehicles on the street.
5. Public transportation options in the vicinity of the subject property include Metro bus access, including the E2, E3 and E4 Military Road-Crosstown bus lines, and access to the Fort Totten Metro Station, accessing the Red, Yellow, and Green lines.

The Applicant's Proposal

6. The Applicant has operated a child development home for six children at the subject property since December 2010 and now seeks to expand the operation to establish a child development center for a maximum of 12 children, ages five and younger, and two teachers.
7. The hours of operation for the child development center will be 7:00 a.m. to 6:00 p.m., Monday through Friday.
8. The Applicant anticipated that children will be dropped off at the facility between 7:00 a.m. and 9:30 a.m., and picked up before 6:00 p.m.
9. No other child development center is located within 1,000 feet of the Applicant's residence.

Harmony with Zoning

10. The subject property is zoned R-2. The R-2 District has "been developed with one-family, semi-detached dwellings, and is designed to protect them from invasion by denser types of residential development." (11 DCMR § 300.1.) The use regulations applicable to the R-2 District provide that "no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used" except for certain enumerated uses. (11 DCMR § 300.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 205 to permit a child development center with a maximum of 12 children and two teachers in an existing structure located in the R-2 District at 5350 Chillum Place, N.E. (Square 3751, Lot 138). 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. (11 DCMR § 205.2-205.10.) Any use or structure permitted in R-1 Districts under § 205 shall be permitted as a special exception in an R-2 District if approved by the Board under § 3104. (11 DCMR § 302.1.) The Applicant meets her burden to prove that the proposed child development center meets the necessary requirements set forth in § 205.

The premises are capable of meeting all applicable code and licensing requirements, as indicated in the OSSE recommendation that the application be approved. (11 DCMR § 205.2.) No objectionable traffic or unsafe pick-up or drop-off conditions are presented, as indicated by OP

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and DDOT. (11 DCMR § 205.3.) The Applicant has sufficient off-street parking to meet the needs of teachers, employees, and visitors, as noted by OP, and the Board does not see any necessity in imposing any additional requirements with respect to the parking. (11 DCMR § 205.4.) The premises, including outdoor play spaces, do not create an objectionable impact on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. (11 DCMR § 205.5.) As a condition of approval, the Board requires that all outdoor activities be supervised and that no outdoor activities be conducted past 6:00 p.m. The premises, including outdoor play sites, comply with all Board requirements to ensure child safety and to protect adjacent and nearby properties. (11 DCMR § 205.6.) Travel to and from off-site play areas does not result in endangerment to children at the facility, as indicated by OP. (11 DCMR § 205.7.) As with the existing child development home, off-site play for the child development center will occur approximately two to three blocks from the premises, and there are adequate sidewalks to facilitate safe walking to and from the off-site play area. The application was submitted to all appropriate agencies and organizations, including OP, OSSE, DDOT, and ANC 5A. (11 DCMR § 205.9.) All agencies recommended approval or support for the application. OSSE recommended that the application be approved, supporting the fact that the premises can meet all licensing requirements set forth in the applicable laws of the District of Columbia. (11 DCMR § 205.10.)

As to the concerns expressed by Commissioner Roberts, the Board first notes that its role is limited to ensuring that this use will not cause external adverse impacts. Whether the proposed facility meets the health, safety, and developmental needs of the children it will serve goes to the question of whether it should be licensed. Although the Board has found that the facility is capable of meeting all applicable code and licensing requirements, the ultimate decision as to whether the license should be granted belongs to OSSE, not this Board.

As to parking and signage, the Board has concluded that given the available public transportation and curbside parking, the parking space provided is sufficient to meet the needs of the teachers, employees, and visitors. The submission to the Board does not show that any sign will be constructed in the front yard. If the Applicant intends to erect such a sign, and assuming that such a sign is even permissible in a Residence District, *see* 12 DCMR A §§ 3107.9.1 and 3107.9.3², the Applicant will have to return to the Board for a modification. The fact that the Board has no authority to grant a sign permit does not mean it can avoid determining the adverse impact of a sign. *See Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 750-751 (D.C.1990) (BZA required to consider effects on surrounding neighborhood of street closings in university's campus development plan, even though Board did not have jurisdiction to approve such proposals) and 12 DCMR A § 3107.9.2. ("Nothing within this Section shall be construed to grant any greater area ... than limited by specific order of the Board of Zoning Adjustment If such a specific order prohibits any signs ... , such specific order shall take precedence over the provisions of this Section").

Lastly, the possibility that other applications for this use might follow is not relevant to the

² Only flush mounted signs are permitted for the present home occupation use. (11 DCMR § 203.5 (c).)

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Board. As indicated by the Court of Appeals, "in evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought." *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n. 1 (D.C.2000). In fact, § 205 includes a provision that anticipates the potential for multiple Child Development Centers in close proximity. Specifically § 205.6 provides:

The Board may approve more than one (1) child/elderly development center or adult day treatment facility in a square or within one thousand feet (1,000 ft.) of another child/elderly development center or adult day treatment facility only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

The Board can assure Commissioner Roberts that it will strictly apply this standard should the circumstances arise.

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 six conditions intended to mitigate potential adverse impacts associated with the operation of the proposed child development center. For the reasons discussed above, the Board concurs with the recommendation of OP that the requested zoning relief should be granted. The Board finds five of the conditions proposed by OP will be sufficient to ensure that the operation of the proposed child development center at the subject property will meet the general and specific criteria set forth in § 3104.1 and § 205.2 through 205.10.³

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 notes that the report submitted by ANC 5A did not raise any issues or concerns, but indicated its support for the application. The Board concurs with the ANC's recommendation.

Based on the findings of fact, and having given great weight to the recommendations of OP and to the report of ANC 5A, the Board **APPROVES** the requested zoning relief under §§ 205 and 3104.1 to establish a child development center with 12 children and two teachers in an existing structure located in the R-2 District at 5350 Chillum Place, N.E. (Square 3751, Lot 138), **SUBJECT** to the following **CONDITIONS**:

³ OP also recommended a condition that would require the provision of one off-site parking space at a neighboring property. The Board declines to adopt this condition. As noted in its discussion of Commissioner Roberts' concerns, the condition is not necessary to mitigate any adverse impact associated with the requested special exception.

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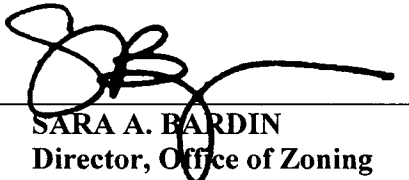
1. This approval shall be for a period of **FIVE (5) YEARS** beginning on the date upon which the order became final;
2. The number of enrolled children shall not exceed 12;
3. The number of staff shall not exceed two (2) staff persons;
4. The hours of operation shall not exceed 7:00 a.m. to 6:00 p.m., Monday through Friday; and
5. Outdoor activities shall be supervised and shall conclude by 6:00 p.m.

VOTE: 4-0-1 (Lloyd L. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Michael G. Turnbull voting to Approve; Rashida MacMurray 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: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 16, 2012

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, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, 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.

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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.