

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18445 of Ana Maria Lora-Garcia, pursuant to 11 DCMR § 3104.1, for a special exception for a child development center (eight children and two teachers) under § 205, in the R-1-B District at premises 1353 Tuckerman Street, N.W. (Square 2786, Lot 106).¹

HEARING DATE: November 13, 2012
DECISION DATE: January 15, 2013

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18445
EXHIBIT NO. 44

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated December 3, 2010, from the Zoning Administrator which stated that the Applicant's home occupancy application for a "Child development home for twelve (12) children" was disapproved due to the need for approval of a special exception by the Board of Zoning Adjustment ("Board" or "BZA") pursuant to 11 DCMR § 302.1 to establish that use in the R-1-B Zone. (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") 4A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4A, which is automatically a party to this application. ANC 4A filed a letter report, dated November 15, 2012, which indicated that at a properly noticed, duly scheduled public meeting held on November 7, 2012, with a quorum present, the ANC voted unanimously to support the application.² (Exhibit 40.) Also submitted for the record was an executed Neighborhood Cooperation Agreement dated January 1, 2013, between the Applicant and ANC 4A. (Exhibit 42.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application, subject to seven conditions. (Exhibit 29.) The District Department of Transportation

¹ The application was amended from an original request for 12 children which was subsequently reduced to ten and finally to eight children. The caption has been altered to reflect the amended relief as granted.

² The Board waived the time requirements to accept the ANC's late filing into the record.

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("DDOT") submitted a letter of no objection dated September 11, 2012. (Exhibit 20.) By its letter, dated August 22, 2012, the Office of State Superintendent of Education ("OSSE") recommended that the application be approved. (Exhibit 19.)

Twenty-four letters of support for the application from neighbors were submitted for the record. (Exhibits 33 and 41.) Written testimony in opposition from Patience Singleton was submitted for the record. (Exhibit 37.) Also, letters in opposition were submitted for the record from Leonard and Mary Dolphin (Exhibit 30), Barbara Robinson (Exhibit 28), Gerri Adams-Simmons (Exhibit 27), and Eric Leifert and Melissa Knutson (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. 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 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. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of TWO YEARS from the final date of the approved order.
2. Enrollment shall not exceed eight children ages six months to five years.
3. The maximum number of staff shall not exceed two staff persons (including the Applicant).
4. The days and hours of operation shall be Monday through Friday from 8:00 a.m. to 6:00 p.m.
5. Pick-up and drop-off periods shall generally be from 7:30 a.m. to 8:30 a.m. and from 5:30 p.m. to 6:30 p.m.

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6. A parking area for two vehicles shall be maintained in the rear yard for the use of the staff.
7. Trash collection shall be scheduled at least once a week.

VOTE: **4-0-1** (Lloyd J. Jordan, Jeffrey L. Hinkle, Nicole C. Sorg (by absentee vote), and Anthony J. Hood (by absentee vote) to APPROVE; the third Mayoral appointee vacant.)

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: January 24, 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.

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 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

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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.