

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18464 of McKinley Battle, pursuant to 11 DCMR §§ 3203.2 and 3104.1, for a variance from the off-street parking space requirements under § 2101, and for a special exception to allow expansion of an existing child development center to 24 children and six staff under § 205, in the R-4 District at premises 4124 3rd Street, N.W. (Square 3312, Lot 61).¹

HEARING DATE: December 11, 2012
DECISION DATE: December 11, 2012

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (“Board” or “BZA”) 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”) 4C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C filed a letter report, dated October 10, 2012, which indicated that at a properly noticed, regularly scheduled public meeting held on October 10, 2012, with a quorum present, the ANC voted unanimously to support the application. (Exhibit 27.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the application, subject to four conditions. (Exhibit 30.) By its letter, dated October 11, 2012, the Office of State Superintendent of Education (“OSSE”) recommended that the application be approved. (Exhibit 26.) The District Department of Transportation (“DDOT”) also submitted a letter of no objection dated December 3, 2012. (Exhibit 31.)

¹ The Applicant amended the application to add the area variance relief from the off-street parking requirements under §2101 and requested a waiver of the 40-day notice requirement, per § 3113.13. (Exhibit 28.) The Board granted the waiver and relief requested. The caption has been changed to reflect the amended application.

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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18464
EXHIBIT NO. 34

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BZA APPLICATION NO. 18464
PAGE NO. 2

Three letters of support for the application from nearby neighbors and clients were submitted for the record. (Exhibit 21.)

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for a variance from the strict application of the off-street parking requirements under § 2101. 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.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for an area variance under § 2101, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

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. The maximum number of children shall be 24.

BZA APPLICATION NO. 18464
PAGE NO. 3

2. The maximum number of staff shall be six.
3. No more than eight children shall be permitted within the outside play area at any one time.
4. The hours of operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday.

VOTE: **4-0-1** (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Michael G. Turnbull 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: December 13, 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.

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

BZA APPLICATION NO. 18464
PAGE NO. 4

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.