

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18528 of Cynthia Davis, pursuant to 11 DCMR § 3104.1, for a special exception for a child development center (12 children and five staff) under § 205, in the R-3 District at premises 4831 9th Street, N.W. (Square 3010, Lot 84).¹

HEARING DATE: April 2, 2013

DECISION DATE: April 2, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated December 14, 2012, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is needed for a special exception, pursuant to 11 DCMR § 3104.1. (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”) 4D and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4D, which is automatically a party to this application. ANC 4D did not file a report on the application.

The Office of Planning (“OP”) submitted a timely report, dated March 26, 2013, recommending approval of the application, subject to conditions. (Exhibit 28.) By its letter, dated February 11, 2013, the Office of State Superintendent of Education (“OSSE”) recommended that the application be approved. (Exhibit 24.) The District Department of Transportation (“DDOT”) submitted a letter of no objection to the application, dated February 7, 2013. (Exhibit 23.)

A petition with five signatures in support for the application from nearby neighbors was submitted for the record. (Exhibit 25.) Three letters of support for the application were also submitted by Ms. Diane Jackson, president and member of the board of the New Family

¹ The Applicant amended the application to increase the number of staff requested from two to five. The caption has been changed to reflect the amended application.

BZA APPLICATION NO. 18528
PAGE NO. 2

Childcare Home Providers Association of Washington, D.C.; and by two parents whose children attend the Applicant's center. (Exhibit 29.) Additionally, a colleague of the Applicant's, Ms. Angelique Speight-Valladaves, testified as to the Applicant's educational attainments and qualifications and in support of the application.

A letter in opposition was submitted by neighbor Dee Parker, 4829 9th Street, N.W.² Ms. Parker raised objections pertaining to adequate parking, trash in the alley, and the Applicant's language and the traffic in and out of her house.³ (Exhibit 27.)

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 OP report, 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 **FIVE YEARS** from the final date of this order.
2. Enrollment shall not exceed 12 children, age 15 years or less.
3. The center shall have a maximum of five staff.
4. a. Drop-off hours shall be primarily between 6:30 a.m. and 9:00 a.m.

² The Board questioned the Applicant if she had met with this neighbor and could address the objections Ms. Parker raised. The Applicant testified that she had not met with her neighbor and did not know about her objections until these were raised in the letter. The Applicant testified in rebuttal to the assertions in the letter by stating that her rear yard was fenced in, her father kept the grounds neat and trimmed, and there was no trash in the alley caused by the center.

³ The Board granted approval of the application with conditions, several of which address Ms. Parker's concerns.

BZA APPLICATION NO. 18528
PAGE NO. 3

- b. Pick-up hours shall be primarily from 4:00 p.m. and 6:00 p.m.
- 5. Two parking spaces shall be reserved on-site for use by the center staff.
- 6. Center trash collection shall be scheduled at least once a week.

VOTE: **5-0-0** (Lloyd J. Jordan, Nicole C. Sorg, S. Kathryn Allen, Jeffrey L. Hinkle, and Marcie I. Cohen to APPROVE.)

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. BANDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 4, 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 AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR

BZA APPLICATION NO. 18528
PAGE NO. 4

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.