

**BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE
DISTRICT OF COLUMBIA**

Application of BBCH LLC

BZA Application No.
Hearing Date:
ANC 3G05

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STATEMENT OF THE APPLICANT

This is the application of BBCH LLC ("**Applicant**" or "**BBCH**") for a special exception to allow the continued operation of the child development center located at 5608 Broad Branch Road, NW (Square 1997, Lot 78) ("**Property**") known as Broad Branch Children's House ("**BBCH**"). The center also seeks variance relief from the parking requirements. The child development center was approved by the Board of Zoning Adjustment in Case No. 17147 (Order attached as Exhibit H) to allow a maximum of 60 children and up to 8 staff members. The application was approved for a term of five years and is set to expire on August 26, 2013. BBCH now returns to the Board to modify the existing approval: it seeks to increase the maximum number of children to 80 and the maximum number of staff to 12 individuals. It also seeks permanent approval of the child development center. Finally, the addition of four staff members increases the parking requirement from two spaces to 3 spaces, from which BBCH seeks relief.

I. NATURE OF RELIEF SOUGHT

BBCH requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve a special exception pursuant to 11 DCMR Sections 3104.1 and 205, for the continued use of a child development center on a permanent basis. The Applicant seeks approval for a maximum of 80 children on-site at any one time and a maximum of 12 staff members at the center. The Property is located in the R-1-B Zone District, which allows a child development center with

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EXHIBIT NO. 4

special exception approval. An excerpt of the Zoning Map is attached as Exhibit B.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3104.1 and of the Zoning Regulations (11 DCMR § 3104.1).

III. BACKGROUND

A. The Applicant

BBCH is a Montessori Children's pre-school for children aged two years of age to six years of age. BBCH serves primarily children from the Chevy Chase, DC neighborhood surrounding the school.

A. Description of the Property

The Property is located in the southwest corner of the intersection of Broad Branch Road, NW and Northampton Street, NW. It is co-located with the Broad Branch Market in a two-story detached structure built in 1919. The building is approximately 8250 square feet in size and the center occupies approximately 2350 square feet on a portion of the first floor and the entire second floor of the building. The Property is bound by Northampton Street to the north and Broad Branch Road to the east. It is adjacent to single family houses to the west and south. It is also bound by a public alley to the south. It is caddy-corner to Lafayette Elementary School

The center is located in the same building as the market, but it is operated independently of the market. There is a second entrance on the south side of the house that is used solely for accessing the child development center. The center is comprised of 4 classrooms above the market and it uses the side yard as an outdoor play area for the children, as well as an office and parent meeting room.

B. Description of the Project

The center is located in Northwest Washington in the Chevy Chase neighborhood. The center serves children two through six years of age and is open Monday through Friday from 8 am to 6 pm. The program is split into two separate programs: the Toddler Program for children aged two to three years of age and the Primary Montessori Program for children aged three to six years of age. BBCH anticipates approximately 24 children in its Toddler Program and 56 children in its Primary Montessori Program.

Children typically arrive at the center at 8 am or 9:15 am. These times are bracketed around and designed to avoid the traffic congestion associated with the Lafayette public school across the street. Approximately 25% of the children stay at the center until 6 pm, when the program closes. A significant portion of the children are only present on-site for a half-day and leave between 12:15 pm and 12:30 pm.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER SECTION 3104.1 OF THE ZONING REGULATIONS

The Applicant is seeking a special exception under Section 205 of the Zoning Regulations for approval for the use of a child development center on the Property. A child development center is allowed in the R-1-B Zone District by special exception pursuant to 11 DCMR Section 205. Section 205 requires the applicant to demonstrate the following: (1) it is capable of meeting all applicable code and licensing requirements; (2) it is located and designed to create no objectionable traffic conditions and no unsafe condition for picking up and dropping off children; (3) it provides sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors; (4) it shall be located and designed so that there will be no objectionable impacts on adjacent properties due to noise, activity, visual, or other

objectionable conditions; (5) any off-site play area shall be located so as not to result in endangerment to the children in traveling between the play area and the center; and (6) if another child development center is located in a square or within 1,000 feet of the proposed center, then the cumulative effect of the centers will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

A. Applicant is Capable of Meeting the Applicable Code and Licensing Requirements.

The licensing requirements for a child development center are enumerated in Title 29 of the D. C. Municipal Regulations. BBCH will satisfy each of these requirements and any other applicable codes and regulations.

B. Applicant will not Create Objectionable Traffic Conditions or Unsafe Conditions for Picking-up and Dropping-off Children.

Under Section 205.3, Applicant must demonstrate that the child development center is located and designed to create no objectionable traffic conditions and no unsafe condition for picking up and dropping off children. Most of the children who participate in the program live in the immediate neighborhood and walk to the center under the supervision of their parents or guardian. In fact, of its current population, 50% children walk to the center under the supervision of their guardians. Nevertheless, there are some children who are driven to the site; accordingly, BBCH staff assist the children to and from the vehicles during peak drop-off and pick-up periods in order to expedite the drop-off and pick-up process and to minimize any potential queuing impacts on the community. BBCH also prohibits any drop-off or pick-up activity during Lafayette Elementary School's peak transportation periods, as it is located just across the street.

C. Applicant Will Not Create Adverse Parking Impacts.

Section 205.4 requires that Applicant provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors. One parking space is required for every four staff members; accordingly, the center requires three parking spaces. BBCH is simultaneously seeking relief from the parking requirements. Of its current staff, 1 individual walks to the site, 2 take public transportation for a total of 3 individuals, or 37.5% of its staff. There is little demand for on-site parking.

D. Applicant will not Create Objectionable Impacts on Adjacent Properties.

Section 205.5 provides:

The center, including any outdoor play space provides, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. 11 DCMR § 205.5.

The proposed child development center does not create an objectionable impact on adjacent properties. The Property is located in close proximity to Lafayette Elementary School, which is a similar use, albeit on a much greater scale. Although the center has cultivated positive relationships with its neighbors, BBCH continues to take action to minimize its impact on its neighbors. The center provides an on-site play area that is used by its children periodically throughout the day. It also provides an outdoor garden to engage the children during their outdoor play time and to focus their attention. The majority of the outdoor play time, however, takes place at Lafayette Park. Lafayette Park is located one block away from the center and it offers 11 acres of outdoor play area. Children walk to the Park with the supervision of BBCH staff. A maximum of 30 students are at the park at a given time.

E. The Board May Require Special Treatment in the Way of Design, Screening of Buildings, Planting and Parking Areas, Signs or as Otherwise Necessary

Pursuant to the previous order, BBCH was required to provide a six-foot wood fence along the property line, which has since been constructed. In light of the existing screening of the Property, BBCH does not believe additional screening measures are warranted.

F. The Off-Site Play Areas Used by Applicant will not Endanger the Children in Traveling between the Play Area and the Center.

Under Section 205.7, "any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself." Although a play area will be provided on-site, the children also use Lafayette Park for some of their outdoor play time. BBCH typically takes 24 children at a time to the off-site park and provides a minimum of 3 adults to supervise the transport of the children.

G. Applicant will not Cause a Cumulative Adverse Effect on the Neighborhood.

Under Section 205.8, the BZA may approve more than one child development center in a square or within 1,000 feet of another child development center only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood. The Applicant is not aware of any other child development centers in the same Square as the Property. Lafayette Elementary School is, however, located across the street from the center and it includes a pre-kindergarten program. BBCH, however, does not believe that the introduction of another child development center in this neighborhood will have an adverse impact. The vast majority of children who attend BBCH live in the neighborhood, demonstrating

the great demand for these services. The center almost need not look any further than its own neighborhood for filling its spaces. Because there are very few people coming to the center from elsewhere and because BBCH prohibits drop-off or pick-up during Lafayette's peak periods, there is no cumulative adverse effect on the community from the operation of both child development centers.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES UNDER SECTION 3103.2 OF THE ZONING REGULATIONS

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In examining the first two elements, the BZA may apply a more flexible standard for determining difficulty when a public service entity is the applicant, such as Applicant. *See National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984); *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979). The D.C. Court of Appeals has applied the more flexible standard to area variances as well as use variances. *See Draude v. D.C. Board of Zoning Adjustment*, 582 A.2d 949, 956 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested parking variance.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning*

Adjustment, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See National Black Child Development*, 483 A.2d at 690; *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). Instead, the BZA may "weigh more fully the equities in an individual case." *National Black Child Development*, 483 A.2d at 690. Further, the characterization of the use as a public service is significant to the determination of uniqueness. In *Monaco*, the D.C. Court of Appeals held:

While a commercial user before the BZA might not be able to establish uniqueness in a particular site's exceptional profit-making potential, we consider that the BZA may be more flexible when it assesses a non-profit organization As Professor Anderson has observed, public need for the use is an important factor in granting or denying a variance"

Monaco, 407 A.2d at 1098.

BBCH is affected by an exceptional situation because it is an existing structure that was constructed in 1919, well before the current Zoning Regulations became effective. The structure comprises the majority of the lot, leaving only a swath of land in the front of the property, along Broad Branch, and along the side of the property. Therefore, in order for the Applicant to comply with the parking requirements, it would need to eliminate the yard, where the children play, or it would need relief to provide parking in the front yard, which is contrary to Section 2116.2 of the Zoning Regulations. In sum, the size of the existing building and its location on the lot, precludes the ability to provide the required parking spaces. Likewise, there is no potential for parking at the rear of the building because there is not sufficient space at the rear of the building for spaces, much less a drive aisle.

Finally, the Applicant is also unique because it provides a significant public service to the Chevy Chase neighborhood and the District. Accordingly, under *Monaco*, the Board may apply a more flexible standard for the determination of uniqueness of the Property.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.* The BZA also may consider the needs of a public service organization that "has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership" *Draude*, 582 A.2d at 956.

The BZA may grant a variance from the off-street parking requirements when providing the necessary parking would dramatically decrease the facilities that an applicant would be able to provide. *Association for Preservation of 1700 Block of N Street, N.W. v. D.C. Board of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978) (approving a variance from the off-street parking requirements for the YMCA). In the present application, it would be unnecessarily

burdensome for Applicant to provide parking for the Building. The Building is over 90 years old and the lot on which it is located simply does not provide sufficient area for the creation of parking spaces. The only possible location for the parking spaces on the property would be in the side yard, which has been designated as the on-site play area for the children. The Building's footprint on the lot creates a practical difficulty in trying to comply with the off-street parking requirements.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. The requested parking variance can be granted without causing any adverse impact on the availability of parking in the neighborhood. The majority of the children enrolled in the program live within walking distance, as do 12.5% of the staff members. The market does provide approximately two spaces on-site for customers; the spaces will also be available to parents and visitors in the event they need to meet briefly with center staff. Otherwise, all drop-off and pick-up operations are facilitated by staff such that parking of the vehicles is not necessary. Staff transport the children to and from the vehicles, creating an efficient pick-up and drop-off system that eliminates the need for parental use of parking spaces.

VI. CONDITIONS OF APPROVAL

Pursuant to BZA Order No. 17147, the BBCH program was approved pursuant to the conditions stated below. BBCH proposes modifications to these conditions as noted in italics below:

1. Approval of the child Development Center (Center) use shall be for a period of FIVE

(5) YEARS. *BBCH is seeking permanent approval for the child development center. Applicant needs certainty that the center will be running on a permanent basis in order to finance improvements and to attract students to the program. Any uncertainty about the permanency of the program creates issues for lenders as well as potential students.*

2. Center drop-off and pick-up periods shall be dispersed and shall not coincide with drop-off and pick-up times at Lafayette Elementary School, whose school hours begin at 8:45 am and end at 3:15 pm. *BBCH does not propose any modification of this condition.*

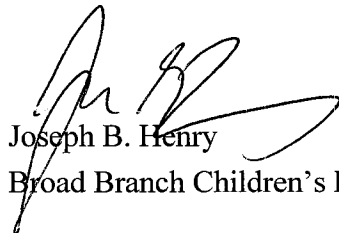
3. Center staff shall assist the children to and from cars during peak drop-off and pick-up periods. *BBCH does not propose any modification of this condition.*

4. The rear of the entire subject property shall be fenced-in by a six feet high fence made of wood. *BBCH does not propose any modification of this condition..*

VII. CONCLUSION

BBCH appreciates the Board's consideration of this application and looks forward to continuing to provide this important service in the D.C. community. It asks that its request for special exception relief to continue the operation of the child development center on a permanent basis be granted, as well as its request for variance relief from the parking requirements.

Respectfully submitted,


Joseph B. Henry
Broad Branch Children's House