

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION AND VARIANCE APPLICATION
PREHEARING STATEMENT

Crystal Hammond (Property Owner and
Director of The Rainbow Child Development Center)

Rainbow Child Development Center
505 57th St NE; Square 5227, Lots 3 and 4

AMENDMENT TO INCLUDE VARIANCE RELIEF

I. Introduction.

The Rainbow Child Development Center (“Rainbow”) was established in 2006 by Ms. Crystal Hammond, who wanted to provide more than a place where children would play with blocks. Ms. Hammond created a center where children would learn valuable school readiness skills and have a place for them to develop self-esteem, leadership, and respect for others. Since its inception, Rainbow has provided quality early childhood development education services to more than 300 children in Ward 7. Rainbow’s mission is to help Ward 7 children close the achievement gap by providing high quality early childhood education with knowledgeable and experienced staff so that the children become school-ready and maximize their quality of life.

Rainbow is currently a Silver Tier, going for Gold, OSSE-subsidized child development center. Rainbow was recently awarded a financial grant from the District’s Office of the State Superintendent of Education (“OSSE”) for the purpose of renovating and expanding Rainbow’s existing facility at 505 57th Street, NE. This grant provides the necessary funds to allow Rainbow to create a state-of-the-art child care facility and to expand to meet the growing demand for quality early childhood development in Ward 7.

Among the District’s wards, Ward 7 has the second highest number of children under the age of five for a total of almost 5,000. The ward also has the second highest number of children that need early childhood development opportunities and is also faced with high unemployment and

families below the federal poverty rate. The OSSE grant is targeted to address these concerns by expanding opportunities for the young children of Ward 7.

This BZA application (the “Application”) seeks special exception approval for Rainbow’s use of the subject property for a maximum possible population of seventy-two (72) children, ages 6 weeks to 12 years, and up to twelve (12) staff.

Amendment for Variance Relief.

The Applicant also asks leave to amend the application to include variance relief for three parking spaces required for the maximum number of twelve (12) staff. The request was not included with the original application. In addition, out of an abundance of caution, the Applicant is requesting rear yard relief. The Applicant believes that the rear yard relief is not needed pursuant to a calculation method used by the Zoning Administrator in the past, although Applicant’s counsel has some concerns about the application of that method to the present situation. Therefore, the Applicant is currently requesting variance relief. The Applicant requests that the Board waive the notice requirement of 11 DCMR § 3113.13 to amend the Application to include the variance request. The Applicant presented the variance relief request for both parking and rear yard setback to ANC 7C, which voted unanimously to recommend approval of the special exception and the rear yard and parking variances. The Applicant also included notice of the variance requests on the Notice Poster posted on the subject property on May 24th.

II. The Subject Property and Surrounding Area.

Rainbow Child Development Center operates within an existing one-story building (the “Building”) located at 505 57th Street, NE (Square 5227, Lot 46) (the “Property”), in the R-2 zone district. A copy of the Zoning Map showing the Property is attached as Exhibit B to the Applicant’s

Statement. The Property is located one lot in from the northeast corner of Eads St, NE and 57 St., NE, on a short, dead-end street. Drew Elementary School, the eventual destination of most of Rainbow's graduates, is located directly across 57th Street. On this block of 57th Street is a lot to the south which is used to garage a vehicle from the funeral home on the opposite corner. Drew Elementary is across the street, and an adult community-based residential facility is located to the northeast, adjacent to the rear of the Property. 57th Street dead-ends on this block as it travels north. Across Eads Street, to the south is multifamily housing, and a funeral home and row dwellings to the west of 57th Street. See exterior photographs attached as Exhibit C to the Applicant's Statement.

The existing Building is a one-story structure with a basement. See interior photographs attached as Exhibit D to the Applicant's Statement. The entire Building is used for the Rainbow Child Development Center. The OSSE grant has allowed Ms. Hammond to plan to construct a one-story addition to the existing Building (the "Addition"), which will also be used entirely by Rainbow. The construction will increase the existing lot occupancy from 26% to the maximum permitted 40%. The construction of the Addition will require the removal of the one parking space on the Property, and will close off the existing curb cut to the Property. The Property is triangle-shaped, with 106 feet of street frontage, 96 feet of length on the south side of the property (running west to east parallel with Eads Street), with a hypotenuse of 143 feet in length, representing the rear line of the Property. The Property is land-locked by Lot 2 to the south and by Lot 44 adjacent along the entire hypotenuse of the Property's triangle shape. Lot 2 to the south consists of a garage used by the funeral home on the opposite corner. Lot 44 is apparently used as a group home. The only possible vehicular access to the Property would be via the front of the lot, but with a proposed building at only 40% lot occupancy, and already insufficient rear yard setback due to the irregular

shape of the Property, and the need for some open space for a possible play area, there is no room for any on-site parking spaces.

The Center has operated at this location with up to forty-two (42) children, pursuant to the existing C of O (attached as Exhibit E to the Applicant's Statement), since 2006. The majority of Rainbow's children live in the surrounding neighborhood, and only three (3) of the current staff of nine (9) travel to the Center by automobile. Therefore, the impact for traffic and parking is very limited, and is easily accommodated by available on-street parking, due to the Property's location on a dead-end street with no other properties fronting on this block. Drew Elementary is the only property on the west side of this block of 57th Street, and it has a large parking lot which handles its parking needs. The area in general has plenty of on-street parking spaces available during the week. Those that drive their children to the Property usually park in front of or near the Center and walk their children into the Center to drop them off. Although DDOT has determined that a traffic study was not necessary, the Applicant has hired Wells & Associates to perform a traffic count and to complete the DDOT scoping questionnaire. The traffic count revealed that the number of vehicle trips would not surpass the 25 directional trip threshold that would require a traffic impact study. Only fourteen (14) daily trips are expected in the morning and fourteen (14) in the afternoon, with 72 children contemplated. A copy of the completed scoping questionnaire and a revised Form 135 will be filed concurrently with this Prehearing Statement.

DDOT has requested, and the Applicant has agreed to close the existing curb cut, which would no longer lead to a parking space. DDOT also suggested that there would be funds available to install a sidewalk on the east side of 57th Street, in front of the Property, which in addition to being more aesthetically pleasing, would enhance safety for the children. The children currently use

a playground at Drew Elementary for play time, and will have a small play area on-site following the construction of the proposed addition.

III. The Application Satisfies the Special Exception Requirements of Sections 3104 and 205.

A. Overview. Pursuant to Subsection 3104.1 of the Zoning Regulations, the Board is authorized to grant special exception relief 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, subject also, in this case, to the specific requirements for relief under Section 205 of the Zoning Regulations.

Uses that are permitted by special exception are deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). This application provides sufficient evidence to show that the Applicant satisfies the relevant zoning requirements of Sections 205 and 3104.1, as described below.

B. The Requirements of Section 205.

The proposal in this application satisfies the requirements of Section 205 of the Zoning Regulations, as described below:

205.2 The center or facility shall be capable of meeting all applicable code and licensing requirements.

The Rainbow Child Development Center currently operates pursuant to a license from OSSE

– Division of Early Learning (attached as Exhibit F to the Applicant’s Statement). OSSE is providing grant funding to Rainbow to renovate and expand its existing facility with the expectation that Rainbow will continue to operate as a licensed child development facility.

205.3 The center or facility shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance.

Rainbow’s location on a dead-end block with essentially no other occupants other than Drew Elementary – which has a large parking lot across the street from the Property – makes traffic conditions safe for the neighborhood and for the children and their families and caregivers. Most of the children are residents of the local neighborhood, and those that drive drop off and pick up their children on this block of 57th Street. Cars can then turn around at the end of the dead-end block and exit the neighborhood, never impacting non-Center traffic. Rainbow has operated in this fashion successfully and without incident or complaint for up to 42 children since 2006.

205.4 The center or facility shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.

The Property is triangular-shaped; narrowing as it goes north. The only space for a possible expansion is to the north of the existing Building, where there was previously one parking space. The shape of the lot makes provision of a parking space impossible, even when the Building and Addition will only occupy forty percent (40%) of the Property. Only three (3) of the Center’s staff commute to the Center by car, and there is typically plenty of on-street parking spaces available in this area, including on this dead-end portion of 57th Street. The expansion will not significantly add to the staff level, requesting a maximum of twelve (12) staff. The removal of the one existing

parking space will be done in conjunction with the removal of an existing curb cut. Therefore, there will be no net decrease in available parking by the removal of the on-site parking space.

205.5 The center or facility, including any outdoor play space provided, 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.

The Rainbow CDC is fairly isolated from the residential properties in the neighborhood. Of the two other properties which have frontage on this block, one is Drew Elementary and the other is just a garage for funeral home vehicles. As part of the renovation and addition, outdoor play space will be provided on the Property.

205.7 Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at center or facility in traveling between the play area and the center or facility itself.

The Rainbow children currently use a playground at Drew Elementary for outdoor play space, to which they walk across 57th Street in the designated walkway at the corner with Eads Street.

205.8 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 Applicant is not aware of any other child/elderly development centers within one thousand (1,000 ft.) of the Rainbow Child Development Center. The property adjacent to the rear of the Property is group home of some kind, but the Applicant does not know if this is considered an adult treatment facility. In any event, it would not appear that the cumulative effect of this or any other facility would have an adverse impact on the neighborhood.

C. The Requirements of Subsection 3104.1.

Granting of 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.

Rainbow CDC has been operating successfully on the Property since 2006, with a maximum of 42 children and 9 staff. The Addition, and an increase of up to 30 children and 3 staff, should not materially alter the existing situation. The Property is uniquely located directly across the street from the place – Drew Elementary – to which most of Rainbow’s children will graduate. In fact, one the great benefits for neighborhood residents is being able to drop off and pick up siblings of different age groups from both Drew Elementary and Rainbow. The Applicant currently has eighteen (18) children who have siblings attending Drew Elementary.

In general, the proposed intensity of the use is compatible with other similarly-situated centers located within residential zones.

IV. **The Application Meets the Test For Variance Relief.**

A. As noted above, the Applicant requests leave to amend the Application to include requests for relief from the parking requirement of three (3) parking spaces for the twelve (12) proposed staff, as well as relief from the rear yard setback requirement of twenty (20) feet. The shape of the lot, the fact that it has no access on two of its three sides, and the location of the existing building and the planned addition – which together take up only forty percent (40%) of the land area of the lot – preclude the location of any parking spaces on the Subject Property.

In addition, the shape of the lot – a right triangle – in addition to precluding parking on the Property, also severely restricts the ability to provide the required minimum rear yard setback of

twenty (20) feet. The location of the existing rectangular building, along with the proposed adjacent, connected, rectangular one-story addition, leads to uneven rear yard setbacks, ranging from more than thirty (30) feet to around eight (8) feet. The Zoning Administrator has calculated rear yards for irregular-shaped lots by dividing the total area of the rear yard by the length of the rear lot line. This calculation would result in a sufficient rear yard. Out of an abundance of caution, however, the Applicant is requesting rear yard relief for the proposed Addition, and has noted this request to ANC 7C and included the request on the Notice Poster posted on May 24th. The existing Building and the proposed addition are only at forty percent (40%) lot occupancy, even though the Addition is on the front property line and the existing Building is very near to the front property line. The impact of this rear yard relief on the property to the rear is negligible, since that property is separated by a high fence, has an elevated grade, and also because the Building and Addition are only one-story high.

B. The Variance Test.

The burden of proof for an area variance is well established. The Applicant must demonstrate three elements: (1) unique physical aspect or other extraordinary or exceptional situation or condition of the property; (2) practical difficulty from strict application of the Zoning Regulations; and (3) no substantial detriment to the public good or the zone plan. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). As the D.C. Court of Appeals has noted, the variance procedure “is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle.” *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541, (D.C. 1972). As set forth below, the Applicant meets the three-part test for the requested variance from the requirement of two (2) parking spaces.

(1) The Property is Subject to an Exceptional Situation or Condition.

The phrase “exceptional situation or condition” in the variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974) (emphasis added). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2nd 1164, 1168 (D.C. 1990).

In this case, the triangular shape of the Subject Property, in conjunction with the location of the existing Building, and the location of the proposed Addition (which will be on the front property line) severely restrict the ability to provide a rear yard that would meet the necessary calculation for rear yard setbacks on irregular lots.

(2) Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990)).

It is well established that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ ... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA, according to *Gilmartin*, include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

The Applicant is only proposing a building with a total lot occupancy of forty percent (40%), and that Building is at or near the front property line. But even with that small footprint pushed to the front of the Subject Property, it was not able to provide the required minimum rear yard setback.

The shape of the Property, and the location of the existing Building and proposed Addition, and the fact that the Property is land-locked on the sides and rear, also precludes the ability to provide the required three (3) parking spaces on the Property.

(3) The Requested Relief Will Cause No Substantial Detriment to the Public Good or to the Intent, Purpose, and Integrity of the Zoning Regulations.

The Applicant enjoys being on a dead end block which has no other properties other than Drew Elementary, which has an on-site parking lot, so there is plenty of on-street parking available. Currently, only three (3) of the existing staff of nine (9) uses a vehicle to get to the Center. The others either walk or take a bus. Regarding the rear yard relief, the property to the rear is separated by a high fence, and is somewhat elevated in grade over the Subject Property. In addition, the

Building and proposed Addition are only one-story buildings, and therefore have little or no impact on the property to the rear due to the limited rear yard setback.

V. Conclusion.

For the reasons stated above, this application meets the requirements for special exception approval by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

A handwritten signature in black ink that reads "Martin P. Sullivan". The signature is written in a cursive, slightly slanted style.

Martin P. Sullivan, Esq.
Sullivan & Barros, LLP