

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19694 of 5104 MacArthur LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703 from the minimum parking requirements of Subtitle C § 701.5, to convert the existing commercial building to a child development center in the MU-3 Zone at premises 5104 MacArthur Boulevard N.W. (Square 1418, Lot 43).

HEARING DATE: February 28, 2018
DECISION DATE: February 28, 2018

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 12.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 3D and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3D, which is automatically a party to this application. The ANC submitted a report recommending approval of the application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 7, 2018, at which a quorum was present, the ANC voted 9-0-0 to support the application subject to five conditions. (Exhibit 55.) Commissioner Alma Gates, ANC 3D05, gave testimony on behalf of the ANC, and noted that in addition to asking for five conditions, the ANC was asking the Board to limit the term of approval to five years. (Exhibit 57.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application subject to two conditions. (Exhibit 52.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application subject to three conditions. (Exhibit 54.)

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Sixteen neighbors submitted letters of support. (Exhibits 33-47, and 49.) One neighbor submitted a letter raising some concerns. (Exhibit 53.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle C § 703, from the minimum parking requirements of Subtitle C § 701.5 to convert the existing commercial building to a child development center in the MU-3 Zone. The only parties to the case were the ANC and the Applicant. 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 and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C §§ 703 and 701.5, 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, WITH THE FOLLOWING CONDITIONS:**


1. This order shall be effective for a period of **FIVE (5) YEARS** to enable ANC 3D to determine the effectiveness of the Transportation Demand Management (“TDM”) Plan.
2. On an annual basis, the Applicant shall furnish both DDOT and ANC 3D with any complaints received regarding the effectiveness of the TDM Plan.
3. The Applicant shall offer employer-paid transit passes or reimbursements for bicycle commuters of no less than \$20 per employee per month.

VOTE: **3-0-2** (Carlton E. Hart, Lorna L. John, and Michael G. Turnbull, to APPROVE;
Frederick L. Hill and Lesylleé M. White, not present, not participating.)

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: March 5, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, 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 SUBTITLE A § 303, 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 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.