District of Columbia
Board of Zoning Adjustment

In re:	
Christian Praise Church	**BZA App. 16657**

GOVERNMENT OF D.C.
ZONING COMMISSION
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Applicant's Memorandum in Support of Exceptions to Proposed Decision and Order, Granting Applicant Christian Praise Church A Special Exception For One Year

The applicant Christian Praise Church, through its counsel, submits exceptions to the Board of Zoning Adjustment's Proposed Decision and Order, dated May 8, 2001, in which the Board grants Applicant's request for a special exception but imposes a one year time limit as a condition. Applicant takes exception to that condition as stated in the Proposed Order, and to the Finding of Fact at ¶ 69 of the Proposed Decision and Order in which the Board sets forth its rationale for the imposition of the one year condition on the special exception. Applicant requests that the Board remove the one year condition from its Final Decision and Order.

BZA
Case No. 16657
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO.16657
EXHIBIT NO.37

I. Statement of Issues

A. Whether the Board of Zoning Adjustment's decision to grant Christian Praise Church a special exception for one year is based on the substantial evidence of record, and therefore complies with the Administrative Procedure Act?

B. Whether the Board of Zoning Adjustment's decision to grant Christian Praise Church a special exception for one year complies with the letter and purpose of the District of Columbia Municipal Regulations and District of Columbia law?

II. Statement of the Case

A. The Application and Public Hearing

On October 20, 2000, the applicant Christian Praise Church filed an application for a special exception with the Board of Zoning Adjustment (the Board), which would permit the Power to Become Childcare Center (the Center), to locate at 3626 Alabama Avenue SE. On January 9, 2001, the Board held a public hearing (January 9 Hearing) on the application . Three commissioners were present at the Hearing: Chairman Sockwell, Vice-Chairperson Reid and Ms. Mitten. At the Hearing, the Board did not make a final decision on the special exception, and set a decision meeting for March 6, 2001 (March 6 Decision Meeting).

B. The Board's Decision Meeting of March 6, 2001

At the March 6 Decision Meeting, the three member panel preliminarily granted the special exception with conditions which included a one year time limit. The Board acknowledged that Minister Brooks, director of the Center, had satisfied its requests

from the hearing on January 9.[1] Ms. Reid stated, "I was impressed with the extent the applicant went to address the concerns and to lay out plans for what they were willing to do to try and give the community the impression that they were not the previous landlord, and that they were not going to just wily-nilly come into the community and not take any type of concern for how it impacted on that neighborhood."[2] Chairman Sockwell[3] and Vice-Chairperson Reid[4] spoke in favor of granting Christian Praise Church's special exception. Ms. Mitten agreed to the special exception with the condition that its duration be limited to one year . Chairman Sockwell[5] and Vice-Chairperson Reid[6] disapproved of the one year limitation. Chairman Sockwell stated that the condition was not "fair" or "reasonable."[7] The three panelists, however, voted in favor of granting the special exception with a one year time limit. As Vice Chairperson Reid explained, "the only reason why I would go along with [the one year time limit] is because of the fact that I don't want to see the people who would be harmed by this not have any facility at all."[8]

C. The Board's Proposed Decision and Order of May 8, 2001

On May 8, 2001, the Board issued a Proposed Decision and Order, in which it set May 25 as the deadline for parties to file exceptions, and scheduled deliberation of the Proposed Decision and Order, and consideration of any exceptions or argument, for its public meeting on June 5, 2001. Among its Findings of Fact, the Proposed Decision includes the following:

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[1] Decision Meeting Transcript at 19-21.
[2] Id. at 33.
[3] See, e.g. Decision Meeting Transcript at 24-25
[4] See, e.g., id. at 22-23.
[5] Id. at 48 (stating "without being able to get what I believe is a fair and reasonable time frame, I will accept" the time frame proposed).
[6] Id at 47-48 (stating, "I am really [being] forced to go along with something that I don't in my heart agree with").
[7] Id. at 48.

that the D.C. Office of Planning (OP) recommended in its report of January 2, 2001 that the application for a special exception be granted, and in its supplemental report of February 27, 2001 determined that the proposed center "would not adversely affect traffic conditions;" that the D.C. Department of Public Works (DPW) found "no significant impact on local traffic or parking" and that the Applicant failed to provide detail on how children would be dropped off and picked up; and that ANC 7B failed to submit a report (Proposed Decision and Order at 2);

that the Department of Health inspected and approved Applicant's proposed child care center (¶23);

that the Applicant had made plans to control the picking up and dropping off of the children enrolled at the child care center, to prohibit pick-up and drop-off on Alabama Avenue, to provide for access to the center from the rear of the building with vehicular access from 36th Place, and to provide for staff to escort children to the center from where they were dropped off (¶¶ 26-30); and during its second year of operation, for the center to provide pick-up and drop-off minivan service (¶31;)

that the Board accepts and incorporates reports submitted by OP and DPW which find that "...the small increase in traffic generated by the center would not adversely (affect) traffic conditions along 36th Place or in the neighborhood " (¶33), and that the proposed center will constitute an asset to the community (¶69);

that a previous child care center located on the site in question was operated neither by Minister Brooks, director of the proposed Power to Become Child Care Center, nor by the current pastor of Applicant Christian Praise Church (¶43) ;

that as a result of Applicant's plans for supervision of activities, existing fencing, and installation of unobtrusive playground equipment, "impact on the adjacent properties from noise or outdoor activities" from the center's operation will be "minimal;" (¶ 53)

and that the combined operations of the St. Timothy Child Development Center and the proposed Power to Become Child Care Center would "not be likely to have an adverse traffic impact" and "would not likely adversely affect the neighborhood due to noise, operations or other similar factors." (¶62).

In the Conclusions of Law and Opinion contained in the Proposed Order and Decision, the Board affirms that it finds OP's recommendation to grant the special exception "persuasive." [9] The Board also concludes that the proposed center meets the requirements of 11 DCMR§205 "as conditioned in this order" in that it meets applicable

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[8] Id. at 47.

code and licensing requirements, creates neither objectionable traffic conditions nor unsafe conditions for picking up and dropping off children, provides adequate plans for off-street parking, and is designed to avoid objectionable impacts on adjacent or nearby properties, among other criteria. [10] The Board also finds, generally and in compliance with the requirement under 11 DCMR 200.2 that uses in an R-1 district promote "...a suitable environment for family life," that the proposed special exception "...is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map."[11]

III. Statement of Facts

Applicant adopts and incorporates the Findings of Fact at ¶¶ 1- 31, 33 – 41, and 43-68, as stated in the Board's Proposed Decision and Order of May 8, 2001.

IV. Argument

The Board should eliminate the one year time limit which its Proposed Decision imposes on the Applicant's special exception for several reasons. First, the imposition of the one year time limit violates the standards articulated in the D.C. Administrative Procedures Act (DC APA), in that the Findings of Fact do not substantially support the conclusion that a year's limit on the special exception is warranted. Second, the one year time limit violates the DC APA in that the one Finding of Fact cited in support of the time limit is not supported by the substantial evidence of record. Third, the one year time limit departs from the purpose and intent of the zoning regulations in that it fails to promote the health, safety and general welfare of parents and children in the District of

[9] Proposed Order and Decision at 12.
[10] Proposed Order and Decision at 12-13.
[11] Id at 13.

Columbia, and imposes unreasonable conditions upon the Applicant in its attempts to meet the spirit and letter of the zoning regulations.

A. The Board's Proposed Decision to Place a One Year Time Limit on the Center's Special Exception Lacks Basis in the Board's Findings of Fact, and Therefore Violates the District of Columbia Administrative Procedure Act.

The District of Columbia Administrative Procedures Act (DCAPA) states:

> Every decision and order adverse to a party to the case, rendered by the mayor or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. Findings of fact and conclusions on law shall be supported by and in accordance with the reliable, probative, and *substantial evidence.*[12]

This subsection of the DCAPA places numerous burdens upon the Board in arriving at a decision to grant or deny a special exception. First, the decision must be accompanied by findings of fact. These findings of fact must be accompanied by reliable, probative and substantial evidence. Second, the decision must be accompanied by conclusions of law. The conclusions of law must also be supported by reliable, probative and substantial evidence.

A finding of fact consists of relevant material drawn from the evidence as it is recorded in the record of the proceedings.[13] Facts must not be arrived at in an arbitrary manner[14] or from considerations of circumstances outside of the record.[15] Therefore, findings of fact must be accompanied by substantial support from the evidence.[16]

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[12] D.C. Code § 1-1509 (e) (emphasis added).
[13] Dietrich v. District of Columbia BZA, 320 A.2d 282 (D.C. 1974)(noting "On review of a BZA order, we must determine whether findings are made are supported by and in accordance with reliable, probative and substantial evidence *in the whole administrative record*). Id. at 284 (emphasis added).
[14] See Hyman v. Coe, 146 F. Supp. 24 (D.D.C. 1956) (establishing that "But where such a Board's decision, upon review, is clearly unreasonable and arbitrary it will be set aside"). Id. at 26.
[15] See Dietrich, 320 A.2d at 284.
[16] See id.

This means that when a fact is contested, the BZA must make an unequivocal and specific determination regarding that fact.[17] Furthermore, the Board must "articulate with reasonable certainty the reasons for the disposition of each contested issue of fact"[18] and note its subsidiary findings of fact that led to the general conclusion.[19] In stating its full reasons for a finding of fact, "generalized, conclusory or incomplete findings [will] not [be] sufficient. The findings must support the end result in a discernible manner, and the result reached must be supported by subsidiary findings of basic facts on all material issues."[20] A mere recitation or summation of one party's arguments from the record does not constitute fact finding.[21] Furthermore, facts which are based upon inaccurate or erroneous information, will likewise not constitute a finding of fact.[22]

A conclusion of law speaks to the larger consideration of whether or not an applicant has met a specific criteria established by the zoning regulations. In making a conclusion of law, the Board must not simply echo statutory language,[23] but explain how it reached its conclusions and why. The BZA is charged with making the circumstances of the specific case explicitly relate to the regulatory framework in making conclusions of

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[17] See Citizens Association of Georgetown v. District of Columbia BZA, 365 A.2d 372, 375 (D.C.1976) (stating "[t]he Board is required to make unequivocal and specific findings concerning . . . the proposed university exception). Id. at 375.
[18] Shay v. District of Columbia BZA, 334 A.2d 175, 177 (D.C.1975).
[19] Id.
[20] Salsbery v. District of Columbia BZA, 318 A.2d 894, 895 (D.C. 1974).
[21] See id. at 897 (noting that several of the Boards purported findings of fact are "not findings at all but instead are summaries of petitioners arguments and are recognized as such by the Board"). Id. at 897.
[22] See Citizens Association of Georgetown, 365 A.2d at 375 (finding the fact finding of the Board deficient because of significant factual errors).
[23] See Citizens Association of George Town, 365 A.2d at 375. See also Robey v. Schwab, 307 F.2d 198, 200 (D.C.Cir.1962)(refusing to sustain an order which was "little more than a reiteration of the language of the regulations insofar as they set forth the conditions necessary for the allowance of a special exception of the type involved here. . . . Obviously [the regulations] require something more than a mere mechanical recitation of the regulatory provisions that authorize the granting of a special exception"). Id. at 200.

law.[24] Conclusions of law are necessarily drawn from findings of fact.[25] In reaching a conclusion of law, the Board must state the findings of fact upon which it has relied.[26] The connection between the facts used and the conclusion drawn must be both explicit and rational.[27] Therefore, it follows, that if the Board has made no findings of fact stating its full reasons for such findings, it cannot have made any conclusions of law.

The Board is authorized to grant a special exception where it would be "in harmony with the general purpose and intent of the Zoning Regulations . . . and will not tend to affect adversely the use of neighboring property."[28] As the Board notes in its Proposed Decision and Order, its discretion in ruling on an application for a special exception is limited to consideration of whether the applicant has met the regulatory requirements.[29] Any conditions which the Board imposes must be necessary to insure the applicant's compliance with the regulations. More narrowly, special exceptions may be granted to child development centers as long as the center is "located and designed to create no objectionable traffic condition for picking up and dropping off children"[30] and does not create "objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions."[31] In setting the parameters for granting a special exception to a child care facility, the Regulations also provide that the Board may "require special treatment in the way of design, screening of buildings,

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[24] For example, in Salsbery, the Board made the conclusion of law that "A great burden of proof is required of the applicant and it is our determination that the applicant has not carried his burden." Salsbery, 318 A.2d at 897. However, in making this conclusion of law, the Board did "not delineate the factors weighed in reaching the conclusion nor the possible deficiencies in the petitioner's presentation." Id. at 897. Finding that the Board needed to do more than repeat the applicable regulations, the Court of Appeals held that the Board's conclusions could not be sustained. Id. at 897.

[25] See id. at 895.

[26] See Stewart v. District of Columbia BZA , 305 A.2d 516, 517 (D.C.1973)

[27] See Salsbery, 318 A.2d at 895.

[28] 11 D.C.M.R. §3104.1.

[29] See Proposed Decision and Order at 11-12.

planting and parking areas, signs, or other requirements as it shall deem necessary to protect adjacent and nearby properties."[32]

Thus the legal standards for assessing first the adequacy of facts, and next the application of the appropriate law, impose special duties of precision and clarity. In issuing its final decision, the Board must make explicit its findings of fact and conclusions regarding the one year time limit. The evidence concerning the time limit must be legally sufficient and must support that it is a condition appropriate to the implementation of the letter and spirit of the zoning regulations. If the Board finds that it cannot make an unequivocal statement regarding the time limit which draws upon specific, probative factual material from the record, then the one year time limit is unsustainable and should be removed.

With the exception of the one year condition, the Findings of Fact contained in the Proposed Decision and Order fully support the Board's Conclusion of Law that "... the proposed special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Map." [33] As summarized in Section IIC above, the Board's Findings of Fact support every regulatory condition for granting a special exception for this type of facility in this type of neighborhood. These Findings are supported by testimony and exhibits to the record, which are corroborated by the departmental reports and recommendations that the special exception be granted, recommendations to which the Board accords appropriate deference. Specifically, the Board is careful to summarize in its Conclusions of Law and Opinion at pp. 12-13 the Findings of Fact that show how

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[30] 11 DCMR § 205.3.
[31] 11 DCMR § 205.5.
[32] 11 DCMR § 205.6.
[33] See proposed Decision and Order at 13.

the Applicant has satisfied the criteria set forth at 11 DCMR §205: by complying with code and licensing requirements (Finding ¶ 23);[34] by eliminating objectionable traffic and unsafe conditions for picking up and dropping off children (Findings ¶¶ 26-31, 33-36);[35] by providing adequate off-street parking (Findings ¶¶ 37-41, 44-48); [36] by avoiding objectionable impacts on adjacent or nearby properties (Findings ¶¶ 49-53);[37] by adopting enhancements and design elements for screening off any adverse impact on adjacent property owners (Findings ¶¶ 54-58);[38] and by locating off-site play to minimize endangerment (Findings ¶¶ 59-60).[39] Finally, the Board explains its Findings (¶¶61-62) that the proximity of the St. Timothy Child Development Center will not result in a cumulative adverse impact on the neighborhood in terms of traffic. [40] In addition to enumerating the facts that support Findings which establish how Applicant has met the criteria for the special exception, the Board also sets forth conditions relating to parking, pick-up/drop-off, that clearly further the regulatory criteria. [41]

In contrast, the one condition which no one Finding of Fact supports , and which furthers none of the regulatory criteria, is the imposition of the one year time limit. We will explain below how the condition fails to support -and in some instances, may even frustrate – compliance with the regulatory criteria. No authority supports the limitation of the special exception to one year, and the Board cites none. The OP Report concluded that "the small increase in traffic generated by the day care center will not affect or make

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[34] 11 DCMR §205.2
[35] 11 DCMR §205.3
[36] 11 DCMR §205.4
[37] 11 DCMR §205.5
[38] 11 DCMR §205.6
[39] 11 DCMR §205.7
[40] 11 DCMR §205.8
[41] See Proposed Decision and Order at 13.

the traffic situation along 36th Place any worse"[42] and did not advise the implementation of a time limit. Moreover, the Report made no indication that such a limitation would be necessary to ensure that the Center would continue to have a negligible impact on traffic. In short, the overwhelming weight of the Board's own Findings of Fact and the reports upon which it legally may rely support the legal conclusion that a special exception be granted without regard to the highly confining strictures of a one year time limit.

B. The Board's Proposed Decision to Place a One Year Time Limit on the Center's Special Exception Lacks Basis in the Substantial Evidence of Record, and Therefore Violates the District of Columbia Administrative Procedure Act.

In support of imposing a one year time limit on the Applicant's special exception, the Proposed Decision cites two points in its Finding of Fact, at ¶ 69: that Christian Praise Church previously operated a child development center at the site in question, and that the parking and traffic generated by dropping off and picking up the children at this center had had an adverse impact upon the neighborhood. The Finding lacks value as probative support for imposition of the one year condition; and in part rests on factual assertions that, as uncorroborated assertions by a party to this contested case, are insufficient as a matter of law .

First, the Board's own Findings of Fact in the Proposed Decision make clear that the current pastor of Applicant Christian Praise Church was not the pastor at the time that a prior center was operated at the site in question, and that the current director of the proposed Center had no connection with the prior facility. [43] Even if supported by evidence of record, any troublesome conduct on the part of prior operators should not be

[42] See Proposed Decision and Order at 2 (referring to supplemental report prepared by OP dated 2/27/01.)
[43] See Proposed Decision and Order, Findings of Fact at ¶ 43.

imputed to the Applicant, its pastor, or to the new Center's director. The assertion of the prior ownership of a prior facility is not probative evidence sufficient to warrant the imposition of the one year condition upon the owner and director of a new facility.

Second, even if conduct by another operator were relevant to the imposition of limits on the current operator, the allegations referred to in Paragraph 69 of previously adverse impacts fail to meet the standards for evidence adequate to support findings of fact. The only support in the record for the claim that a prior center in some way "caused adverse impacts on the neighbors along the public alley at the rear of the center" derives from claims made by the opponents to the child care center. Nothing else in the Board's Findings of Fact, or in the recommendations submitted by OP and DPW lend substance to this claim. While, as the Board notes in its Proposed Decision, the findings of OP are to be given great weight, [44] the uncorroborated assertions of neighbors opposed to the Applicant's project are not. [45] Reviewing courts have treated factual assertions made by such opposing parties or persons with special skepticism. The BZA's decision must be "controlled by the evidence adduced as it relates to the requirements for a special exception."[46] This means that even if there is significant neighborhood opposition to an application, such "opposition is not a sound basis for denial of a special exception."[47] It follows that neighborhood opposition alone is not a valid basis for imposing a time limit on a special exception. [48] Since the Board failed to articulate any additional reasons for

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[44] See Proposed Decision and Order at 12 (citing D.C.Code §5-412.4, requiring that the Board accord "'great weight'" to the Office of Planning's recommendations.

[45] Salsbery v. District of Columbia BZA, 318 A.2d 894, 897 (D.C. 1974) (noting that several of the Boards purported findings of fact are "not findings at all but instead are summaries of petitioners arguments and are recognized as such by the Board").

[46] Dietrich v. District of Columbia BZA, 320 A.2d 282, 285 (D.C.1974).

[47] Id.

[48] Despite the legal irrelevance of neighborhood opposition to the regulatory review of an application for a special exception, it should be noted that at the March 6 Decision Meeting, Chairman Sockwell indicated

its proposed decision to impose the one year time limit, one must conclude that the Board relied entirely on the objections of the neighbors. Such reliance is unsupportable as a matter of law, and unnecessary given the other strong, confirmed findings of fact in this case.

C. The One Year Time Limit Fails to Promote the Health, Safety and General Welfare of Parents and Children in the District of Columbia.

The Regulations encourage the Board to consider the intent of the Regulations, and to grant special exceptions where doing so is "in harmony with [its] general purpose and intent."[49] One of the primary purposes of the Zoning Regulations is to promote health and safety: specifically, "...the health, safety. . . prosperity, protection of property, civic activity, and recreational, educational and cultural opportunities, and as would tend to further economy and efficiency the supply of public services."[50] Placing a one year time limit on Christian Praise Church's special exception does not promote health and safety because it would discourage parents from bringing their children to the Center, the alternative to which may be leaving their children at home alone, or with young, inexperienced babysitters.[51]

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that any neighborhood opposition should not be given particular weight because the petition in opposition that was submitted to the Board contained only seven valid signatures. See Decision Meeting Transcript at 25.

[49] 11 D.C.M.R. 3104.1.

[50] See D.C. Code 5-414 cited in Dietrich v. District of Columbia BZA, 320 A.2d 282, 284 (D.C.1974) (enumerating purposes of Zoning Regulations); see also Rose Lees Hardy Home and Sch. Assoc. v. District of Columbia BZA, 324 A.2d 701, 706 (D.C.1974) (citation omitted).

[51] It is important to note that there is a severe shortage of day care in the District of Columbia. In fact, the need for child care is currently at a high, with more than 9,000 children on waiting lists. See Center for Applied Research and Urban Policy, University of the District of Columbia, 2000 District of Columbia Child Care Market Rates and Capacity Utilization Study xii (Dec. 2000) (attached.) Furthermore, only 1.1 percent of childcare providers in the District currently provide services on the weekends, a service which is a fundamental aspect of the Power to Become Child Care Center program. Id at vii . This study does not break down statistics by ward and quadrant. See also Proposed Decision and Order, Findings of Fact at¶22 (acknowledging a need for child care in the geographic area.)

The one year time limit on the Center's special exception undermines the Center's ability to provide safe care for children in the southeast community. Parents will hesitate to send their children to a Center which may be temporary, as its transient nature implies that it is unreliable and unstable. Children need a stable environment in order to thrive, and parents need to know that a day care center has some longevity in order to be assured that their child is in a safe and positive environment.[52] Thus, the short time limit makes the Center less appealing to parents. As a result, the time limit makes it less likely that parents and children will benefit from the health and safety benefits arising from a relationship with the Center. Therefore, the time limit fails to further the Regulations' purpose: to promote health, safety and the general welfare of people in the District of Columbia.[53]

1. The One Year Time Limit Does Not Promote Educational Opportunities

As set forth above, the one year time limit would discourage people from using the Center. As a result, both parents and children will be denied the opportunity to avail themselves of the educational and career opportunities that would potentially arise through their relationship with the Center. In light of the Regulations' purpose to promote "education,"[54] and the general principle that "uses of land for educational

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[52] Decision Meeting Transcript at 47 (statement of Vice-Chairperson Reid) ("In the first place, the center is going to have difficulty even getting kids, because most people don't want to take their children to a place that they can only be guaranteed services for a year."); see also id. at 40 ("They also have to be able to provide a reasonably stable environment for children . . . [o]ne year, I believe, is not fair to the children or their parents.").
[53] See Dietrich, 320 A.2d at 284 n.2.
[54] Id.

opportunities are highly favored,"[55] the Board's decision to impose such a restrictive time limit on the Center is not consistent with the purpose of the Regulations.[56]

First, the Center provides extensive educational programs. These include teaching children morals and values, providing cultural education and diverse activities from which children can learn. The name of the Center – The Power to Become Child Care Center – symbolizes its founders' intention to educate children and to teach each child that he/she has the ability to learn, succeed, thrive and become whomever or whatever he/she chooses.

Furthermore, parents may also derive educational benefit from their child's affiliation with the Center. A parent who wants to pursue a career, higher education, or even attend classes for a high school equivalency, needs to find care for his/her children in order to do so. Discouraging use of the Center will deny children and parents access to the educational benefits that would arise through a relationship with the Center. Thus, the one year time limit is inconsistent with the purpose of the Regulations and is erroneous.

2. The One Year Time Limit Does Not Promote Prosperity

It is no secret that parents who do not have access to child care are unlikely to be able to work and provide for their families' basic needs. Especially with the growth of single parent households and welfare-to-work programs, parents must work in order to support themselves and their children. The Center's commitment to children and convenient hours provide parents with security that their children are well taken care so that parents can pursue employment and educational opportunities. By discouraging

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[55] Glenbrook Road Assoc. v. District of Columbia BZA , 605 A.2d 22, 32 (D.C. 1992)(citation and internal quotations omitted).

the use of the Center, the one year time provides an obstacle to parents' ability to work and families' potential to survive and prosper.

Weekend service is convenient to parents, and is safer for children. Instead of leaving their children alone or with a young babysitter, parents could entrust their kids to a Center which has proven compliance with the District's strict rules for safety, facilities and programs, and will teach their children morals and values, while providing them with cultural education and recreational activities. Furthermore, parents who need child care in order to work and meet their family's financial needs – a number which is increasing with the growth of single mothers and welfare-to-work programs – would have an exemplary service available to meet their child care needs.

The one year time limit on the Center's special exception undermines the Center's ability to provide a public service for the community and parents. Parents will hesitate to send their children to a Center which may be temporary, as its transient nature implies that it is unreliable and unstable. Children need a stable environment in order to thrive, and parents need to know that a day care center has some longevity in order to be assured that their child is in a safe and positive environment.[57] Thus, the short time limit makes the Center less appealing to parents. As a result, parents and children are less likely to benefit from the health and safety benefits, educational and career opportunities that would arise through their relationship with the Center.

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[56] See 11 D.C.M.R. § 3104.1 (setting forth criteria for evaluation of special exceptions).

[57] Decision Meeting Transcript at 47 (statement of Vice-Chairperson Reid) ("In the first place, the center is going to have difficulty even getting kids, because most people don't want to take their children to a place that they can only be guaranteed services for a year."); see also id. at 40 ("They also have to be able to provide a reasonably stable environment for children . . . [o]ne year, I believe, is not fair to the children or their parents.").

The time limit imposed by the BZA undermines the Regulations' purpose and contravenes the Board's obligation to make decisions that are consistent with the purpose and intent of the Regulations. Instead of promoting "health, safety. . . prosperity . . . educational and cultural opportunities," and furthering " the supply of public services,"[58] the Board is squelching a day care center which exemplifies these purposes. The time limit should be eliminated to allow the Center an opportunity to thrive and to provide needed services to the community.

D. The One Year Time Limit Imposes Unreasonable Conditions Upon the Applicant in its Attempts to Meet the Spirit and Letter of the Zoning Regulations.

In Nathanson v. District of Columbia, the District of Columbia Court of Appeals held that "the Board may impose *reasonable* conditions upon the grant of a special exception to insure that it will be in harmony with the zoning regulations."[59] The Board's authority to grant and place conditions on special exceptions is limited. Like all administrative agencies, the BZA is "bound to follow their own rules and regulations."[60] As the Board is aware, discretion "is limited to a determination whether the exception sought meets the requirements of the regulation[s]."[61] This restrictive framework requires the Board to contain its evaluation of a special exception application to an analysis of whether the proposed facility would "tend to adversely affect" the neighborhood, and to whether the facility is consistent with the "purpose and intent" of

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[58] See D.C. Code 5-414 cited in Dietrich v. District of Columbia BZA, 320 A.2d 282, 284 (D.C. 1974) (stating that the purpose of the Zoning Regulations).
[59] 289 A. 2d 881, 881 (D.C. 1972)
[60] Martin v. District of Columbia Courts, 753 A.2d 987, 994 (D.C. 2000) (citation omitted).
[61] Gladden v. District of Columbia BZA, 659 A.2d 249, 255 (D.C. 1995); see also Stewart v. District of Columbia BZA, 305 A.2d 516, 517 (D.C. 1973).

the Regulations. Therefore, the Board may only consider a special exception application in light of the standards set forth in the Regulations. Furthermore, the Board may only impose conditions on special exceptions that are necessary to ensure the applicant's compliance with the Regulations.

The one year condition that the Board proposes to impose upon Minister Brooks' special exception is unreasonable. First, the one year time limit is unreasonable because it requires the applicant to make significant investments in the location, while offering no guarantees as to the Center's future ability to use the improved location even if it satisfies the other conditions the Board placed upon the special exception. Second, the one year time limit unreasonably subjects Christian Praise Church to additional administrative fees and repetitious procedures. Third, the one year time limit subjects the children and families who will use the Center to uncertainty and the possibility of upheaval.[62] Fourth, the one year time limit is unreasonable because it does not encourage quality and excellence in childcare facilities. Last, placing so short a time limit on the special exception is prejudicial to the Center's viability as a functional business that it is tantamount to a denial.[63]

1. Taken in Combination with the One Year Time Limit, The Conditions Imposed By the Board Are Contradictory

[62] See Decision Meeting Transcript at 47 (statements of Vice Chairperson Reid)(noting "And then [the families will be] burdened with only having to bring their children to the facility for one year"). Id. at 47.
[63] See id. at 47 (statements of Vice Chairperson Reid)(stating that the one year time limit "just almost nullifies the whole point.").

In order to take advantage of the special exception, Christian Praise Church must comply with all the conditions placed in the Proposed Decision and Order.[64] Although the Board did not state it as an explicit Condition of the Proposed Order, it did note that Christian Praise Church will pave the area of its lot, to use as a drop-off/pick-up zone, in conjunction with the goal of eliminating fire hazards from parked vehicles and debris. [65] Another condition, proposed by Minister Brooks and adopted by the Board, requires Christian Praise Church to invest in landscaping and grounds maintenance for the area.[66] It is unreasonable to require extensive investment in the facility under one set of conditions, while subjecting the day care to uncertainty of tenure and loss of investments under another. As the Applicant must comply with *all* the conditions in the order in order to avail itself of the special exception, these conditions should be in harmony with one another.

1. The One Year Time Limit Will Result in Unreasonable Administrative Fees and Repetitious Administrative Proceedings

The regulations do not provide for extensions to special exceptions.[67] Thus, the one year time limit requires that Christian Praise Church reapply for a special exception after one year.[68] In reality, Minister Brooks will need to apply for a new special exception immediately after the Board's final order is issued, Minister Brooks will need

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[64] See Nathanson, 289 A.2d at 881(stating "The Board may impose reasonable conditions upon the grant of a special exceptions . . . and such conditions should be enforced if the takes advantage of the special exception's benefits). Id. at 881.

[65] Proposed Decision and Order, Finding of Fact at ¶ 41.

[66] Id. at 15, ¶ 9 of Order.

[67] See March 6 Decision Meeting Transcript at 43-46 (statements of Mr. Bergstein)(explaining to the Commissioners that "[I]f they did come back in a year, it would be for a new special exception. There is no extension regulation in place. So prior to the term of the special exception itself, they would need to file for a new special exception in order to - - and a hearing would have to be held, and a decision rendered and published before they would be able to resume the use if the use expired before the finial decision was rendered." Id. at 45.

to apply for a new special exception.[69] Applying for a new special exception also means Minister Brooks will have to spend significant funds to pay filing fees.[70] In addition, Minister Brooks may need to expend resources on research and lawyers fees to help him prepare for the new hearing on his special exception.

Money is not the only resource that will be expended on a new special exception hearing. Administrative hearings are time consuming, not just for the Board, but also for the applicants who appear before them. As the director , administrator, and business manager of a child development center, Minister Brooks has few resources beyond his own skills and time. As such, he needs to be able to focus his energies on developing a client base, writing curriculum for his center and ensuring that the children in his care are stimulated and well cared for. He cannot do so if he is constantly in meetings with his attorneys, planning for a new hearing, appearing before the ANC and making appearances before the Board of Zoning Adjustment. Time is a resource which is perhaps even more precious than money. Therefore, the repetition of the administrative procedures that the one year time limit will impose will endanger Minister Brook's ability to function in a real way. The burdensomeness of these costs makes the one year time limit on his special exception unreasonable. Therefore, the one year limit should be removed as a condition from the special exception.

3. The One Year Time Limit Unreasonably Imposes Upon the Families and Children Who Will Use the Center

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[68] Id.
[69] Id. at 46.
[70] 11 D.C.M.R. § 3180.1(b)(2) imposes a filing fee determined by the maximum number of children the proposed center will serve. The fee is twenty-five dollars per child. As the Center serves thirty children,

The one year time limit has the potential to disrupt the lives of the children and families who will depend upon the Center. As Vice Chairperson Reid noted at the March 9 Decision Meeting, the Center will provide valuable services to a portion of the community, that is required to work outside of regular business hours.[71]
At the Decision Meeting, Vice Chairperson Reid stated that it was "the height of insensitivity not to take into consideration the fact that you have people who very much need this particular facility."[72] Likewise, it is insensitive and unreasonable not to consider the burden that the one year time limit places upon families using the Center. Should Minister Brooks' application for a special exception be denied, Center's families would be "burdened with only having to bring their children [to the Center] for one year"[73] and further burdened with having to find new care situations for their children. In addition, there is no guarantee that these families will be able to find comparable care for their children. Minister Brooks' unique hours[74] and close proximity to Anne Beers school[75] are rare assets that may not be available to families elsewhere.

2. Time Limited Special Exceptions Do Not Encourage Excellence in Child Care Facilities

The policy of imposing time limits on child care centers has a tangible, negative effect on the children such centers will serve. Fearing the revocation of their special

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Minister Brooks will be expected to pay $750.00 to make another appearance before the BZA. This will be the second time that Minister Brooks will have to pay this fee.

[71] Decision Meeting Transcript at 29 (statements of Vice Chairperson Reid)(stating "And I particularly looked at the aspect of the weekend care to give child care to persons who may not have the privilege of working 9 to 5 Monday through Friday, and would need to have some facility open to them for them to be able to have jobs; wherein, if they had to work at night, or had to work irregular shifts, that there was some mechanism in place to address that. And I don't know if the other day care centers [in the area] were making any provisions for that or not, but I felt with condition that this particular day care center would be an asset to that community." Id. at 29.

[72] Id. at 47.

[73] Id. at 47.

exception, and the vagaries of court or administrative proceedings, child care center providers may shy away from making extensive investments in their facilities. Providers who operate under time limited special exceptions do not have any incentive to make improvements to their facilities that are not mandated by law or the building inspector.

For example, time limits discourage operators from installing permanent, durable equipment, such as play gyms or the kitchen vents necessary to provide children with hot meals. Likewise, time limits may also dissuade child care providers from investing in desirable safety features such as center-wide sprinklers, which are not required by the District of Columbia's regulations, but may have a significant impact of safety.

This does not mean, of course, that Minister Brooks will automatically provide substandard care. However, the time limits may dissuade him and other similarly situated child care providers from striving for excellence and going above and beyond what the law requires of them. The real victims of this policy are the children and families of the District, who are seeking quality and innovative care for their children.

The Board may impose reasonable conditions upon special exceptions in order to ensure that the use will be harmonious with the intent of the zoning regulations.[76] However, the imposition of "unfair and unreasonable and inappropriate"[77] conditions exceeds the Board's authority. The condition of a one year time limit on Minister Brooks' special exception is so onerous that it is unreasonable and must be removed.

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[74] See Proposed Decision and Order, Finding of Fact ¶18-20 (describing extended hours.)
[75] See id at ¶5 (describing Center's proximity to Anne Beers school.)
[76] See Nathanson, 289 A.2d at 881.
[77] Decision Meeting Transcript at 40 (statements of Chairman Sockwell)(noting "[o]ne year, I believe, is not fair . . . I would not be willing to look at less than 2 years simply because it doesn't give enough time for the program to settle in, for the contracts to go to renewal, for all the things that you are looking for a one year's anniversary. Two years at least gives time for the day care to settle into its environment, and I believe that it is unfair and unreasonable, and inappropriate, to put one year on this facility.") Id. at 40.

5. The Center's Viability as a Functional Business is Threatened by the One Year Time Limit

Imposing a one year time limit upon the Center is unreasonable, because it unduly prejudices Minister Brooks' ability to operate the Center.[78] The one year time limit injects a high degree of uncertainty into the business, which is unmanageable for a small business owner. As Chairman Sockwell noted at the March 6 hearing, "[t]his is a business organization that we have to work with. And it is not a huge corporation, and it is a small targeted business that has to work within the context of their means."[79]

As a small business owner and director of the Center, Minister Brooks simply cannot afford to make extensive investments in the Center without some reasonable assurance that he will be able to reap the benefits of those investments. For example, in order to open, Minister Brooks will need to bring Center's building and grounds into compliance with the requirements of District of Columbia regulations for child care centers. He has already spent significant funds on carpeting, installing a fire alarm system and age appropriate toilets, and replacing the windows. [80] Should Minister Brooks lose his special exception after a year and be unable to operate at the location, the money invested in these improvements will be lost.

In order to make these extensive and costly renovations, Minister Brooks will likely need to obtain outside financing. The one year time limit increases the risk that Minister Brooks will be unable to obtain the necessary banks loans. The potentially short life span of the Center diminishes Minister Brooks' creditworthiness. Potential lenders

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[78] See id. at 52 (statements of Vice Chairperson Reid)(asserting that the Center has been prejudiced by the one year time limit on the special exception and Chairman Sockwell assenting).
[79] Id. at 40.
[80] Proposed Decision and Order, Findings of Fact ¶13.

will readily perceive the financial risks inherent in financing improvements to a location that may be lost after one year.

Furthermore, in order to operate his Center, Minister Brooks will need to attract clients. The imposition of a one year time limit means that the Center cannot promise its clients consistent care. This is likely to be a significant deterrent to potential clientele.[81] Minister Brooks will also experience difficulties in hiring because of the one year time limit. It will be difficult for Minister Brooks to attract workers because he cannot offer them stable, long-term employment. This situation detracts from the quality of the care the children will receive, as Minister Brooks will not be attractive to the most capable and sought after workers. It also threatens the very viability of the Center. If Minister Brooks is unable to attract the necessary workers, he simply will not be able to open his doors. Conditions which make it impossible for a small business owner to take advantage of a special exception and run a viable business are not reasonable. Therefore, the time limit on Minister Brook's special exception should be removed.

6. In Imposing the One Year Condition, the Board Required the Applicant To Shoulder a Greater Burden than What the Regulations Require

The Regulations require the applicant only to show that its facility does not "tend" to have an "adverse impact" on the community, or otherwise create objectionable conditions for its neighbors.[82] If the applicant "makes the requisite showing . . .the Board ordinarily must grant the application."[83] However, in its Proposed Decision and Order, at Finding of Fact ¶69, the Board offered as the rationale for the one year time limit that it

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[81] See discussion *supra* note 57 and accompanying text.
[82] See 11 D.C.M.R. §§ 3104, 205; see also Glenbrook Road Assoc., 605 A.2d at 26.

would "afford" the Applicant Christian Praise Church and the Center the "...opportunity to carry through on the commitments they have made..." and "to demonstrate that the center would not adversely affect the neighboring properties." Since in granting the exception the Board has indicated as a matter of law that the applicant has met its burden, this "opportunity" in fact constitutes yet another hurdle: to project compliance into the future, to a greater degree of certainty than the regulations require.

In any case where the recipient of a special exception does not fulfill his promises or maintain compliance with the conditions imposed by the Board, the special exception may be revoked. In this case, the Board imposed numerous conditions on the Center's special exception. The Board's conditions included a parking contract proposed by Minister Brooks, his plans for traffic control, landscaping, trash removal, and maintenance of the parking area behind Christian Praise Church.[84] Violation of these conditions alone would result in revocation of the Center's special exception. Thus, a remedy is already in place to ensure compliance with the Board's conditions, and to protect neighbors from any resulting adverse impact.

Nothing in the regulations requires the applicant to "demonstrate" perfect compliance in order completely to assuage the fears of the community, as implied in the Finding at ¶ 69. Indeed, the "applicant is not charged with considering every option that any party in opposition might conceptualize."[85] There is nothing in the record which indicates that the neighbors in this case should feel the need for, or be entitled to,

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[83] Glenbrook Road Assoc, 605 A.2d at 30; see also Stewart v. District of Columbia BZA, 305 A.2d 516, 517 (D.C. 1973) (stating same).
[84] See Proposed Decision and Order at 13-15.
[85] Glenbrook Road Assoc., 605 A.2d at 32.

additional safeguards at the expense of Minister Brooks and the children who would benefit from the Center.

Minister Brooks has satisfied the burden of proof as set forth in the Regulations. First, the Board has found the Center 's purpose and operations to be consistent with the purpose of the Regulations, and to fit within the character and spirit of a residential community.[86] Second, Minister Brooks demonstrated that the Center will not *tend* to have an adverse impact on the community. The law does not require Minister Brooks to prove anything further. Moreover, there is nothing in the record that suggests that the conditions, many of which were proposed by Minister Brooks and adopted without reservation by the Board, will not have a tendency to alleviate any adverse impact the Center may have on the neighborhood. The Board made no statements calling into question the feasibility or efficacy of these conditions. Likewise, the Board made no findings which questioned Minister Brook's integrity and his willingness to follow through with the conditions. Thus, the Board has no valid justification for its imposition of a more stringent burden. Therefore, the stated basis for the time limit is improper. Since the time limit is not otherwise supported by the record, it should be removed.

D. Conclusion

The Board's decision to grant Christian Praise Church's special exception indicates that the Applicant satisfied its burden to show that the Center will not create "objectionable conditions" and will not "adversely affect" the neighborhood. However, the Board 's proposed imposition of a one year limit on the special exception requires that Minister Brooks meet a condition without basis in the totality of findings of fact or

conclusions of law which the Board has articulated. The decision that a one year time limit should be imposed on the Center is not based on substantial evidence. Ultimately, the one year time limit is unreasonable and will impede Minister Brooks' ability to provide a much needed service to the families in his community. Therefore, the applicant respectfully requests that the Board eliminate the one year time limit from Christian Praise Church's special exception.

Submitted by:

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Certification of Service

I hereby certify that on this 24th day of May, 2001, I had copies of this Memorandum delivered by Federal Express courier to the addresses of the other Parties to this contested case: Barbara B. Ashby, 2145 36th Place, S.E., Washington, D.C. 20020; and to Roscoe Grant, Jr., Chairperson, ANC 7B, 3200 S Street, S.E., Washington, D.C. 20020.

Susan D. Bennett

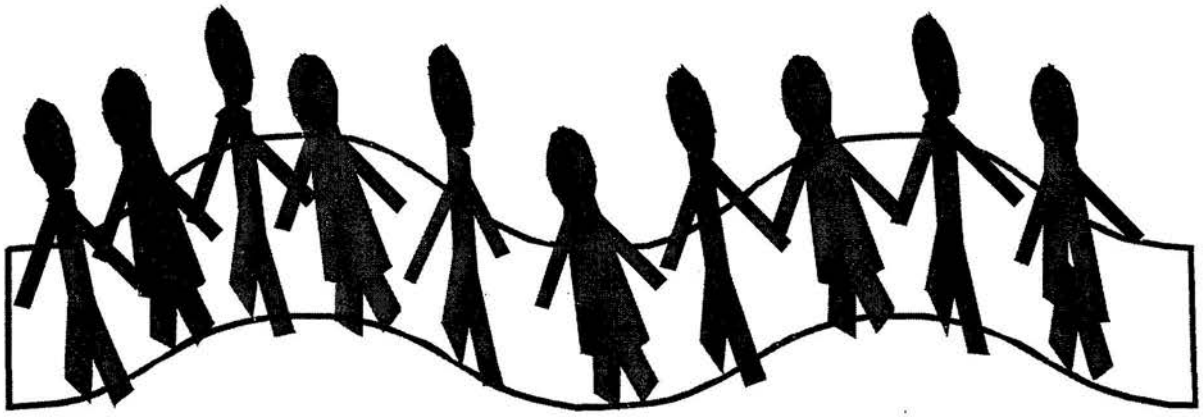
[86] See Proposed Decision and Order at 13.

2000 District of Columbia Child Care Market Rates and Capacity Utilization

A Study of Family Home and Child Care Center Providers in the District of Columbia

December 2000

DRAFT



Prepared for
Department of Human Services
Office of Early Childhood Development

University of the District of Columbia
Center for Applied Research and Urban Policy

Deborah L. Lyons, Ph.D.

Executive Summary

The Office of Early Childhood Development (OECD), Department of Human Services, contracted with the Center for Applied Research and Urban Policy (CARUP) at the University of the District of Columbia to conduct a Market Rate and Capacity Utilization Study of child care providers in the District of Columbia. The first such study was conducted in 1998 and reported on provider characteristics, market rates for child care services, and child care capacity utilization and expansion needs in the city. This study updates the data from the first report and provides additional information on compensation, benefits, and retention of child care providers in the District of Columbia.

The District of Columbia's Office of Early Childhood Development (OECD) has undertaken initiatives to implement the recommendations from the 1998 Market Study. However, there is a need to continually update data on market conditions surrounding child care in the District of Columbia. In keeping with current data needs, this study was undertaken to:

- Provide demographic data on the community of active licensed child care providers in the District of Columbia;
- Determine rates paid by the general public for child care services in the District of Columbia;
- Compare rates paid by the general public with rates paid by the Department of Human Services;
- Identify current compensation and types of benefits received by child care providers; and
- Estimate retention rates for child care providers in the District of Columbia.

The Market Rate and Expansion Capacity Study entailed a mail and telephone survey of licensed family child care providers and licensed child care center providers in the District of Columbia.

The Study Population

The study population includes all active licensed child care providers offering child care services in the District of Columbia. The list of licensed providers was obtained from the D.C. Department of Health, Human Services Facility Division (HSFD), and included 230 names, addresses, and telephone numbers for family child care homes and 365 names, addresses, and telephone numbers for child care centers by ward.

The Survey Instrument

The survey instrument used in the 1998 study was modified and expanded for this survey. The preliminary survey instrument was refined on the basis of feedback received from OECD and the Data and Needs Assessment Subcommittee of the Mayor's Advisory Committee on Early Childhood Development (MACECD). A pretest was conducted of the refined instrument with a small sample of both family home and child care center providers.

Publicizing the Survey

CARUP, working with the Office of Early Childhood Development and the Data and Needs Assessment Subcommittee of the Mayor's Advisory Committee on Early Childhood Development, publicized the survey through several venues.

Data Collection

Interviews were conducted at various times during the day, evening, and weekend and appointments were made for call backs at times convenient for the provider. A bilingual interviewer was available to provide language assistance in Spanish as needed. CARUP made up to eight attempts to contact all licensed child care providers in the District of Columbia.

Number of Respondents

CARUP completed interviews with 90.3 percent of the 195 family child care providers and 75 percent of the 360 child care center providers contacted. The response rate for the overall survey was 80.3 percent, representing 176 family care providers and 270 child care center providers for a total of 446 interviews.

Findings

Provider Characteristics

1.1 Approximately 81 percent of family child care providers and 16 percent of child care center providers classify themselves as for profit operators, while 51.7 percent of child care center providers and 5.7 percent of family child care providers indicated they were nonprofit providers.

1.2 Most child care providers operate their services Monday through Friday. Less than 1 percent of family child care providers and 1.1 percent of child care center providers offer regular Saturday hours.

The average number of hours of operation per day for both family and center-

based child care providers is 11. More than 93 percent of family child care providers and 85 percent of center providers operate between 9 and 12 hours per day. Most providers operate on a 7:00 a.m. to 6:00 p.m. schedule.

Family child care providers are closed an average of 14.6 days per year and child care centers are closed an average of 19.4 days per year.

1.3 Child care providers in the District of Columbia offer a wide range of child care services. Full-time child care services are offered by 98.3 percent of family providers and 84 percent of center-based providers, while part-time services are available from 18.4 percent of family providers and 41.3 percent of centers. Evening, overnight, and Saturday care is more limited at child care centers.

While family child care providers are more likely to offer services for mildly ill or sick children, service for children with disabilities is more readily available at child care centers. Many family child care providers indicated that they lacked the proper training to care for children with special needs, but were willing to receive training.

1.4 Child care centers responding to the survey employed 3,837 workers. Approximately 75 percent of those employees are directly involved with children in the classroom. The single largest employee group is teachers.

In addition to paid staff, both family child care providers and center-based providers use volunteers to assist them. Virtually the same percentage of centers used volunteers in 1998 and 2000, 61.2 percent and 61.5 percent, respectively. Providers using volunteers were asked in this year's survey how many hours per week of parent volunteer service they received. Eleven (11) percent of these family providers and 75.6 percent of these center providers indicated that parents volunteer. The average hours of parent volunteer service per week was 1 hour for family providers and 13.9 hours for centers.

1.5 Approximately 61.8 percent of child care center employees and 41.9 percent of family child care providers have educational experiences beyond the high school / GED level. This represents an increase in education levels for both types of providers since 1998, up from 57 percent for center providers and 35 percent for family providers, respectively. College degrees are held by 37.3 percent of center employees and 15 percent of family providers, and the Child Development Associate (CDA) is held by 24.5 percent of center employees and 26.9 percent of family providers.

1.6 There has been a significant increase in clock hours of training for family child care providers as well as for all categories of center employees. The average annual clock hours of training ranges from a low of 22.5 hours for classroom aides to a high of 42.3 hours for administrators. Additionally, training hours have more than doubled since 1998 for family child care providers. Still, a substantial number of family providers and center personnel participated in no training

activities. Providers reporting zero hours of training range from a high of 40.2 percent of family providers to a low of 8.7 percent for center administrators.

Clock hours of training include both on-the-job training and training during work and non-work hours.

1.7 Center providers were asked to give salary information for each employee category. Beginning salaries, salaries for an employee with three (3) years of experience, and salaries for an employee with five (5) or more years' experience were requested. Centers were also asked to provide the number of hours worked per week and the number of weeks worked per year for each category of employees. These figures were used to compute adjusted salary figures.

The mean beginning salary for a teacher with a Bachelor's degree is $22,463 per year, or $11.76 per hour. The median annual salary is $24,000 (or $12.02 per hour). The comparable salaries for a teacher with the CDA certification are $18,930 per year ($9.64 per hour) for the mean and $18,919 per year ($9.62 per hour) for the median. The mean salary shows the average salary earned based on the number of employees in that group. The median salary is that point at which one-half of the employees in that group earn more and one-half earn less.

1.8 While the percentage of centers offering benefits has not changed significantly since 1998, there has been a substantial increase in the number of family providers with benefits. However, most providers declined to respond to this question in the 1998 survey. Thus, caution must be exercised in using the 1998 benefits information for family providers as a basis for comparison.

Nearly 70 percent of child care centers provide health insurance benefits to their employees. Approximately 83 percent of centers responded to the question "percent of benefit paid by the employer." Sixteen (16) percent of centers pay for 100 percent of health benefits, 35 percent pay at least 50 percent of costs, and 30 percent pay none of the cost. Almost 80 percent of center providers offer paid sick leave and vacation leave, while 47.4 percent have retirement benefits.

1.9 Rates were computed for each age category, for both full-time and part-time care, and annualized based on the reported hours per day, days per week, and months per year of care provided. Then, the annualized rate was multiplied by the number of enrolled slots for each age category.

For family providers, the gross annual enrollment revenue has a mean average of $18,011 and a median of $18,134. Twenty-five percent of family providers receive less than $11,453 in gross receipts.

The difference between gross revenue received by market rate centers and centers with subsidies continues to be substantial. Gross revenue received by market rate centers is 66.3 percent higher than revenue received by DHS contract providers. This differential was 67 percent in 1998.

1.10 Approximately one-fourth of the family child care providers and 54.5 percent of child care center providers charge registration fees for children enrolling in their programs. Child care centers are more likely to charge for meals and special activities/programs. However, most providers do not charge additional fees directly to parents.

The average percent of revenues received directly from parents is 63.7 percent for family providers and 59.8 percent for center-based providers. The median revenues are 80 percent and 100 percent, respectively.

Child care center providers reported a variety of other revenue sources. Fund-raising activities generate revenue for 37.2 percent of these providers, while 17 to 25 percent receive revenue from grants and/or agency reimbursements.

1.11 Approximately 25 percent of child care centers and 8 percent of family home providers have received accreditation from a professional accreditation organization. An additional 49.6 percent of child care centers are currently engaged in some step of the accreditation process. The most frequently cited accreditation organization for centers is the National Association for the Education of Young Children (NAEYC) and the organization for family child care providers is the National Association for Family Child Care (NAFCC).

1.12 A total of 146 providers (54.1 percent) reported data on staff retention and hiring. These providers had an average of 2.6 staff members leave during the past twelve months. These centers reported hiring a total of 439 employees, or an average of 3 new employees. The number of new hires equaled or exceeded the number of employees leaving, except in the category of administrators.

Family Child Care Provider Rates

2.1.1. Approximately 54.6 percent of all family child care slots for infants (children ages 6 weeks through 12 months) are with market rate providers. The full-time market rate for infants is $25.00. This rate is the same for providers with DHS contracts or provider agreements. Therefore, the total pool of family care providers has a rate of $25.00 per day as well.

2.1.2. The full-time daily market rate for Toddler I (children ages 13 through 24 months) is $20.00. More than 45 percent of Toddler I is with market rate providers. Providers with DHS contracts or provider agreements have a daily rate of $23.75. The total pool of family child care providers has a rate of $23.00 per day.

The full-time daily market rate for children in the Toddler II age group (ages 2 to 2 ½ years) is $24.00. Providers with DHS contracts or provider agreements have a daily rate of $23.00. The total pool of family care providers has a rate of $24.00.

2.1.3. The full-time daily market rate for preschool children (ages 2 ½ to 4 years) is $20.00 per day. The full-time rate for providers with DHS contracts or provider

agreements is $23.55. The rate for the total pool of providers is also $23.55. More than 56 percent of preschool children are with market rate providers.

2.1.4. The full-time daily market rate for school-age (over 4 years old) children is $15.00 per day. Providers with DHS contracts or provider agreements have a rate of $17.34 per day. The rate for the total pool of providers is $17.34 per day. More than 51 percent of school-age children in full-time care with family child care providers are with market rate providers.

Child Care Center Provider Rates

2.2.1. Approximately 41 percent of all infant care slots are with market rate providers. The full-time daily market rate for infants (children ages 6 weeks through 12 months) is $45.03. Providers with DHS contracts or provider agreements have a daily rate of $35.00. The total pool of center-based providers has a rate of $42.60 per day.

2.2.2. The full-time daily market rate for Toddler I children (ages 13 through 24 months) is $43.89. Approximately 41 percent of toddlers are with market rate providers. Providers with DHS contracts or provider agreements have a daily rate of $35.00. The total pool of child care center providers has a rate of $26.79 per day.

The full time daily market rate for the Toddler II age group (2 to 2 ½ years) is $39.60. Providers with DHS contracts or provider agreements have a rate of $26.80 per day. The total pool of center-based providers has a daily rate of $36.72.

2.2.3. The full-time daily market rate for preschool children (ages 2 ½ to 4 years) is $36.26 per day. The rate for providers with DHS contracts or provider agreements is $24.00. Approximately 68 percent of the preschool slots are with DHS contract providers. The rate for the total pool of providers is $30.00.

2.2.4. The full-time daily market rate for school-age (over 4 years old) children is $42.44 per day. Providers with DHS contracts or provider agreements have a rate of $23.00 per day. The rate for the total pool of providers is $27.29 per day. Just more than 36 percent of school-age children in full-time care with child care center providers are with market rate providers. The DHS subsidy rate is significantly below the market rate.

2.2.5 The full-time market rate for school-age children when school is closed is $43.62 per day. Providers with DHS contracts or provider agreements have a rate of $22.00 per day. The rate for the total pool of providers is $23.40 per day. Less than 14 percent of the school-age children in full-time care with child care center providers are with market rate providers. Most school age children (82.5 percent) are with DHS contract providers.

Other Rates

2.3 Child care providers responding to the survey currently enroll 638 children with disabilities. Approximately 6.8 percent of family child care providers and 24.8 percent of centers have children with disabilities currently enrolled. The rates are not specifically for children with disabilities; they are the usual rates charged by providers for all children enrolled.

2.4 Only 13.1 percent of family providers and 1.5 percent of center providers reported rates for nontraditional hours of care. Of those reporting rates, 78.3 percent of family providers had overnight rates, 65.2 percent had evening rates, and 51.8 percent had weekend rates. Three of the four center providers reporting had evening and weekend rates; two had overnight rates. Their rates, however, were not provided by age category.

The mean average daily rates reported by family providers for each category of care are $35.60 per day for overnight care, $38.50 per day for weekend care, and $28.25 per day for evening care. Each center had a unique category of rates; therefore, an average could not be determined.

Capacity Utilization and Expansion

3.1 Survey respondents have a licensed capacity of 17,175 child care slots. Family child care providers are licensed for 860 slots and child care center providers are licensed for 16,315. The capacity utilization for family child care providers is 88 percent; for child care center providers, it is 86.8 percent; and for total providers it is 86.9 percent. The capacity utilization was also computed for both market rate and DHS contract providers. Over 94% of current capacity is being utilized by centers with and without DHS contracts.

3.2 There are currently 9,236 children on provider waiting lists. Family child care providers have 501 children on waiting lists including 266 infants and 189 toddlers. Child care center providers have 8,735 children on waiting lists. While preschool children are the largest single age group on these waiting lists, there are significant numbers of children waiting in each category. Children under 2.5 years of age have 5,760 wait list slots.

3.3 Family child care providers are more willing than child care center providers to expand their hours of operation. Over 44 percent of family providers versus 36 percent of center-based providers indicated a willingness to expand hours. Both family providers and center providers were most willing to expand hours for evening care, 31 percent and 19.8 percent, respectively. Less than 10% of child care center providers indicated a willingness to expand hours of operation for any categories other than evening and weekend care.

3.4 Approximately 28 percent of center providers and 58 percent of family child care providers are able to enlarge their spaces to accommodate additional children. Family child care providers can accommodate children in all categories, with

most providers indicating an ability to care for more toddlers and infants. Child care center providers are most able to accommodate additional preschool and school-age children.

3.5 The majority of child care providers are willing to expand their services if financial assistance is available. Approximately 75 percent of center providers and 71 percent of family providers indicated a willingness to expand with assistance. Sixty-four (64) percent of family child care providers stated that they were willing to hire an assistant in order to care for additional children.

While more family child care providers cited money for equipment as the greatest need, center providers were most concerned with money for renovation The second-highest need for both types of providers is trained staff.

Conclusions and Recommendations

Conclusions: Provider Characteristics

4.1. Child care providers continue to offer a wide range of services in the District of Columbia. As in 1998, family child care providers appear to be more flexible than child care center providers in addressing the demand for nontraditional hours of service (evening, overnight, and weekend).

While 20.2 percent of family providers and 51.7 percent of center providers reported offering services for children with disabilities, these children are actually enrolled at only 6.8 percent of family homes and 24.8 percent of child care centers.

4.2 Survey respondents have a total of 3,837 employees. Approximately 75 percent of all child care employees are directly involved with children in the classroom. The staffing levels at both market rate and DHS contract centers have increased during the past two years, while the average enrollment has remained the same. The staffing increase has been higher at DHS contract centers resulting in the closing of the disparity in child to staff ratios between market rate and DHS contract centers. This increase is likely attributable to the significant increase in the DHS contract provider share of infant and toddler slots requiring more staff.

Infants and toddlers, as a percentage of total enrollment, have almost doubled at DHS contract centers during the past two years. In 1998, only 11.3 percent of enrollees at DHS contract centers were infants and toddlers compared to 32.8 percent at market rate centers. In 2000, infant and toddler enrollment increased to 21.6 percent of total enrollment at DHS contract centers compared to 30.9 percent at market rate centers.

Although the ratio of children to staff is quite similar at market rate and DHS contract centers (4.3 to 1 and 4.6 to 1, respectively), there remain significant differences in the staffing patterns. While the disparities have narrowed, market rate providers continue to have fewer children per teacher and assistant teacher and DHS contract centers have fewer children per classroom aide.

There are disparities in the education credentials held by both teachers and total classroom personnel at market rate centers compared to staff at DHS contract centers. Teachers at market rate centers are 2.6 times more likely to have a Bachelor's degree or higher degree than are teachers at DHS contract centers (58.4 percent and 21.9 percent, respectively). Approximately one-third of the total classroom staff at market rate centers has high school/GED as their highest education level compared to nearly one-half of total classroom personnel at DHS contract centers.

4.3. While most child care providers are receiving training on an annual basis, more than 40 percent of the family child care providers receive no training. Among center-based employees, 20.6 percent of classroom aides and 13.9 percent of assistant teachers participated in no training activities. These figures represent a significant increase in providers not participating in training since 1998.

4.4. Average beginning salaries for child care employees range from $13,831 per year or $7.77 per hour for classroom aides to $31,523 or $15.25 per hour for administrators. The average beginning salary for teachers with a Bachelor's degree or higher is still relatively low, $22,463 per year or $11.76 per hour.

Market rate centers, on average, pay higher annual and hourly wages for administrators than do DHS contract centers. While annual salaries appear to be higher for classroom personnel at DHS contract centers, hourly wages are not. Thus, these employees are likely to work more hours per year than employees in equivalent positions at market rate centers.

4.5. Child care providers continue to have a wide range of educational experiences and credentials. Many providers are continuing to take advantage of the Child Development Associate (CDA) certification with 24.5 percent of the current child care center employees and 26.9 percent of the family child care providers holding the credential.

There is a significant financial incentive for employees to increase their level of education. Teachers with a Bachelor's degree earn approximately 19 percent more than teachers with a CDA. Teachers with a CDA earn approximately 19 percent more than assistant teachers and 37 percent more than classroom aides.

4.6. There has been a reversal in the average annual enrollment revenue received by DHS contract providers compared to market rate providers. Family providers with DHS contracts or provider agreements receive higher gross revenues than market rate providers. The average gross revenue for family child care providers

is $18,011.

The difference in gross enrollment revenue received by market rate center providers continues to be substantially higher than gross revenue received by providers with a DHS contract or provider agreement. Market rate centers receive, on average, a gross revenue of $512,558 compared to $308,294 for subsidized centers. Approximately 37 percent of the differential (or $75,000) can be attributed to enrollment differences.

Average gross enrollment revenue received, based on child care rates, is not sufficient to cover the estimated average operating cost of child care centers in the District of Columbia. DHS contract providers appear to compensate for the revenue shortfall by employing a higher proportion of staff with lower education credentials than equivalent staff at market rate centers.

Child care providers continue to rely on fund raising, in-kind goods and services, contributions, and/or grants to cover their operating deficits.

4.7. For all employee positions (as well as family providers), the average tenure of employees is higher among DHS contract providers than market rate providers. Overall, 50 percent of classroom aides have less than two years tenure on the job and 50 percent of teachers have less than four years tenure on the job.

4.8. More than 21 percent of family child care providers have no health insurance and 63 percent have no retirement; even fewer have leave or other benefits. Approximately 30 percent of child care centers provide no health benefits to employees and nearly 53 percent offer no retirement benefits. There is still a critical need to expand benefits in the child care community in order to maintain a pool of highly qualified career-oriented child care providers.

On average, only 62 percent of center employees participate in benefits offered. Cost is the most often cited barrier to participation.

4.9. Both family child care providers and center providers have expressed an increased interest in accreditation programs. Nearly one-half of child care center providers are currently preparing for and/or applying for professional accreditation.

Conclusions: Market Rates

4.10. More family child care providers are contracting or signing provider agreements with DHS to provide child care services. In 1998, only 29 percent of family child care slots were with DHS contract providers. In 2000, nearly 50 percent of the slots are with these providers, increasing the pool of slots available to children participating in the Child Care Subsidy Program.

4.11. The Office of Early Childhood Development has implemented a tiered reimbursement system, "Going for the Gold." This is a three-tiered system with current rates available to all providers with DHS contracts or provider agreements

and full market rates available to providers meeting the highest criteria based on quality.

4.12. Family child care providers generally do not charge additional fees or engage in other fund-raising activities to supplement revenues received from parents.

Child care center providers raised a significant portion of their funds from sources other than direct payments from parents. Fund-raising activities, grants from public and private agencies, contributions, agency reimbursements, and other sources help to keep parent costs down.

Conclusions: Capacity Utilization and Expansion

4.13. More than 90 percent of the child care center capacity of both market rate child care providers and providers with DHS contracts or provider agreements is currently being utilized. Approximately 88 percent of the current capacity of family child care providers is being used.

4.14. There are over 9,200 children currently on waiting lists of child care providers responding to the survey. While preschoolers are the largest single age group on the waiting lists, there are significant numbers of children waiting in each category. While infants and toddlers currently use 21 percent of the total enrolled child care slots, this age group comprises 62.4 percent of the names on current provider waiting lists. The current available capacity of child care providers is insufficient to meet this demand. Thus, there is a need for expanded quality child care services in the District of Columbia.

4.15. There has been a decline in the percentage of family child care providers willing to expand their hours of operation. This decline may be offset by the modest increase in centers willing to expand their hours of operation. Family child care providers, however, are still more flexible in meeting parent needs for emergency and weekend care. Both family providers and center providers have indicated an ability to enlarge their current spaces to accommodate more children.

4.16. More than 70 percent of current child care providers are able and willing to expand their existing services to accommodate more children, particularly if financial assistance is available. Additionally, 64 percent of family child care providers are willing to hire an assistant to care for more children. The areas of greatest need for expansion are money for renovation and money to hire trained staff for child care center providers and money for equipment and trained staff for family child care providers.

Recommendations: