GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16915 of Barbara Schriever Allan, pursuant to 11 DCMR § 3104.1, for a special exception for the continued operation of a child development center having 23 children and three staff (last authorized by Board of Zoning Adjustment ("Board") Order No. 15713), under § 205, in an R-1-B District, at premise 2828 Hurst Terrace, N.W. (Square 1420, Lot 12)

HEARING DATE: September 24, 2002
DECISION DATE: November 12, 2002

DECISION AND ORDER

The applicant in this case is Ms. Barbara Schriever Allan ("Applicant"), the owner of the property that is the subject of the application. The Applicant runs a child development center ("center") out of her home on the property at 2828 Hurst Terrace, N.W. The child development center has been the subject of three earlier Board orders, the first of which, dated June 7, 1984, approved Applicant's proposed house addition and the operation of a child development center therein. This approval was granted for three years from the date of the order. The second order, dated August 11, 1987, extended the approval of the operation of the child development center for a period of five years, until June 7, 1992. The third order, dated October 26, 1992, continued the approval for another 10 years. All three of these orders included conditions controlling various aspects of the child development center's operation, such as hours of operation and maximum number of employees.

Early in 2002, the applicant applied to the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) for a new certificate of occupancy for her child development center, as her old one expired on October 26, 2002. DCRA disapproved her request due to the need for Board of Zoning Adjustment approval. DCRA informed the Applicant that she needed to apply to the Board for a special exception under §§ 3104.1 and 205. Therefore, on June 10, 2002, she filed the appropriate special exception application with the District of Columbia Office of Zoning (OZ).

On September 24, 2002, the Board held a public hearing on the application. After the hearing, the Board determined that additional information was needed from the parties and the District of Columbia Office of Planning (OP) prior to making its decision. After receipt of such information, the Board held a public decision meeting on November 12,

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2002, and, for the reasons stated below, voted 4-0-1 to grant the application, subject to certain conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 25, 2002, the OZ notified OP, the District of Columbia Department of Transportation (DDOT), the District of Columbia Department of Health, Advisory Neighborhood Commission (ANC) 3D, the ANC Commissioner for the affected Single-Member District and the Ward 3 Councilmember of the filing of the application. Pursuant to 11 DCMR § 3113.13, the OZ published notice of the hearing on the application in the District of Columbia Register and on July 16, 2002, mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, the Applicant's affidavit of posting indicates that on September 9, 2002, she placed a zoning poster on the Hurst Terrace street frontage of the subject property, in plain view of the public.

Requests for Party Status. The Board granted Mr. Joseph Rich party status. He acted as representative and spokesperson for a group of individuals opposed to the application. ANC 3D was automatically a party to the proceeding. There were no parties in support, although several persons testified in support of the application.

Applicant's Case. The Applicant presented her case and stated that she has been operating the child development center from her home for the past 18 years. She would like to continue to do so, at her current staffing level and with her current enrollment maximum of 23 children on site at any one time. She requested an indefinite term or, at the least, another 10-year term, as was granted in the 1992 Board order. The Applicant presented the report and testimony of a traffic expert, who expressed approval of her traffic control plan and stated that the center's traffic operates efficiently and does not impede through traffic on Hurst Terrace. The Applicant also contended that she does not need to provide any off-street parking for the child development center.

Government Reports. DDOT provided the Board with a thorough report, stating that:

> [t]he proposed continuation of the subject site as a child development center will not have a negative impact on parking supply in the immediate community, or create dangerous or objectionable traffic conditions.

DDOT then concluded that it has "no objection to the application."

The OP report, dated September 24, 2002, recommended approval of the application, subject to the condition of a seven-year term. During the hearing on the application, the Board asked OP to provide supplemental information, specifically, the dates when OP

representatives met with the opponents and what issues were discussed. The Office of Planning provided the Board with a supplemental information statement, dated October 3, 2002. The Board also asked OP to obtain information and guidance from DDOT concerning parking signage and the use of traffic cones in front of the subject property. The Office of Planning provided this information in a supplemental report from DDOT, dated November 8, 2002. In this supplemental report, DDOT stated that the use of traffic cones was considered, but not approved for this site, and that the Applicant should forward a request to DDOT for the installation of regulatory signage.

The District of Columbia Department of Health recommended continuation of the child development center and furnished the Board with a copy of the center's current license.

ANC Report. By letter dated September 5, 2002, ANC 3D indicated that, at its regularly scheduled monthly meeting, with a quorum present, the ANC voted to support the special exception, subject to the following conditions:

1. The current student cap of 23 and employee cap of three would not be increased.
2. The center's operating hours would remain from approximately 9:00 a.m. to approximately 12:00 noon on weekdays, from September through May for a maximum of 160 days a year.
3. The center will establish a traffic plan as a part of its contract with parents.
4. The center will review the feasibility of staggered arrival times, and if staggering is feasible, it should be added to the traffic plan and the contract with parents.
5. A term limit of five years.
6. The special exception be granted only to the Applicant.

Parties and Persons in Support. There were no parties in support, however, six individuals testified as persons in support of the application and approximately 44 letters in support from neighbors and nearby community residents were entered into evidence.

Parties and Persons in Opposition. Mr. Joseph Rich was granted party status as representative and spokesperson for a group of residents opposed to the application. Four individuals testified as persons in opposition. Approximately 14 letters in opposition were received into evidence, all but one of which complained of increased traffic congestion and parking problems allegedly due to the child development center. The opposition contends that the applicant only recently made known her plan to retire and sell the subject property and child development center business. The opposition was averse to the idea that the sale of the center would mean the continuation of the center beyond the time that the applicant lived in the home.

The opposition repeatedly stated that it was not trying to shut down the child development center, but that the center should have certain conditions imposed on it. The opposition's requested conditions are:

1. A three-year term, starting at the expiration of the Board's last approval.
2. Reduction in student enrollment from the current 23 to no more than 15 in the 2003-2004 school year, and no more than eight in the 2004-2005 school year.
3. Reduction in employees from three to two, beginning in the 2003-2004 school year.
4. The hours of operation shall be between 9:00 a.m. and 12:00 p.m., from September through May, for a maximum of 160 days per year.
5. The center will establish a traffic plan as a part of its contract with parents.
6. The center will review the feasibility of staggered arrival times, and if staggering is feasible, it should be added to the traffic plan and the contract with parents.
7. The subject property must remain a single-family residence, and not be wholly converted to a child development center.

Hearing. The public hearing on the application was held on September 24, 2002. The Applicant testified, as did her traffic expert, Mr. Martin Wells, P.E., of Wells & Associates, LLC. The ANC testified in support of the application, but requested imposition of the conditions listed above. OP testified and adopted the conditions listed in the ANC's letter, except for the five-year term. In opposition, Mr. Rich testified as a party and called two witnesses.

Decision Meeting. At the public meeting on November 12, 2002, Chairman Griffis moved to grant the application and the Board approved several conditions as part of the motion. The Board then voted 4-0-1 to grant the application, as conditioned, with one member not present, not voting.

FINDINGS OF FACT

The Subject Property and the Surrounding Area

1. The subject property is in the Palisades Neighborhood of Ward 3, located at 2828 Hurst Terrace, N.W. (Square 1420, Lot 12)

2. The property is located on the west side of Hurst Terrace between Garfield Street to the north and Fulton Street to the south.

3. The property is zoned R-1-B.

4. The property is improved with a two-story plus basement detached single-family dwelling with a one-story rear addition which houses a child development center.

5. The dwelling has an attached garage with a private driveway leading to it.

6. The dwelling was built in 1937 on a 9,912 square foot lot with fifty feet of street frontage and is directly across Hurst Terrace from Francis Scott Key Elementary School. ("Key School")

7. The large rear yard of the dwelling, which is fenced and landscaped, is used as an outdoor play area for the child development center.

8. The immediate neighborhood is predominantly developed with single-family detached houses on large lots.

9. Since the Board's last Order approving the child development center, in 1992, the neighborhood within which Hurst Terrace is located has become denser, with an expansion of nearby commercial establishments and a concomitant increase in traffic and parking.

10. There is more traffic on Hurst Terrace than is generated by the child development center and/or its immediate neighbors.

11. The Board finds that the increase in neighborhood density has had negative impacts on traffic and parking on Hurst Terrace.

Key School

12. Key School recently underwent a major renovation, during which three eight-foot by twenty-foot containers were placed in the street, blocking part of the east side of Hurst Terrace. During the renovation, construction vehicles drove and parked on Hurst Terrace.

13. During the 2001-2002 school year, all Key School student drop-offs and pick-ups occurred on Hurst Terrace. During the 2002-2003 school year, however, all drop-offs and pick-ups were switched to new school entrances on Eskridge Terrace and Dana Place. Once construction is completed, only drop-offs and pick-ups for pre-kindergarten and kindergarten students are scheduled to resume on Hurst Terrace.

14. DDOT opined that once the on-site parking facility for Key School teachers and staff is available, parking congestion on nearby streets will be alleviated.

15. The Board finds that the construction at Key School has temporarily negatively impacted traffic and parking on Hurst Terrace.

The Child Development Center

16. The Applicant's child development center, known as Barbara's Montessori School, serves children from two to four years old. Its current hours of operation are from 9:00 a.m. to 12:00 noon.

17. The school's current total enrollment is 47 children, with an on-site cap of 23 children, *i.e.*, no more than 23 children are on-site at any one time.

18. In addition to herself, the Applicant has two full-time and four part-time staff people working for the child development center, some paid and some volunteer. No more than three employees are on site at any one time.

19. The child development center hosts three special events per year to which all the parents are invited. They are usually held on the first day of school, around Halloween, and on the last day of school.

Previous Board Orders

20. The Applicant has been running a child development center from the subject property since 1984, as permitted by Board Order 14121, dated June 7, 1984. That order approved the center for three years, for a maximum of 20 children and three staff and approved hours of operation from 9:30 a.m. to 12:30 p.m., Monday through Friday, September through May.

21. On August 11, 1987, by Order number 14646, the Board approved the operation of the Applicant's child development center for another five years, with an expiration of June 7, 1992. All the conditions in the previous order were continued and a new one added: the center was required to have a staffperson assist in the discharge and pick-up of children by escorting the children to and from their parents' vehicles.

22. The most recent Board Order approving the use, number 15713, dated October 26, 1992, repeated all previous conditions, with two changes -- approval was granted for 10 years, and maximum enrollment was raised to 23 children.

District of Columbia Department of Health

23. The child development center is currently licensed by the District of Columbia Department of Health. This license will expire on June 10, 2003.

Traffic and Parking Issues

24. Hurst Terrace is 30 feet wide, with curbside parking permitted on both sides of the street. Parking is limited to two hours between 7:00 a.m. and 8:30 p.m., except for holders of Zone 3 residential parking permits. Parking is unrestricted for a distance of approximately 150 feet on the west side of the street, south of Garfield Street.

25. Space is available to park 11 cars on the east side of Hurst Terrace and 19 cars on its west side. On an average day, between 8:00 a.m. and 9:30 a.m., six cars were parked on both the east and west sides of the street, respectively. Between 11:00 a.m. and 1:00 p.m., five cars were parked on the east side of the street and four cars were parked on the west side.

26. Hurst Terrace carries moderate traffic volumes: 107 vehicles in a one-and-one-half hour period between 8:00 and 9:30 a.m. and 85 vehicles in a two-hour period between 11:00 a.m. and 1:00 p.m.

27. The child development center generates light traffic volumes: 18 cars in the morning and 21 cars at mid-day. Traffic generated by the center accounts for about a third of all traffic on Hurst Terrace between 8:45 a.m. and 9:15 a.m., and about half of all traffic on Hurst Terrace between 11:45 and 12:15 p.m.

28. The center generates traffic for short periods of time, over a 49-minute period in the morning and a 25-minute period at mid-day. Most of the morning traffic is concentrated between 8:57 and 9:05 a.m.

29. Lieutenant Patrick Burke, the District of Columbia Traffic Coordinator for the Metropolitan Police Department, who was interviewed by Mr. Wells, the Applicant's traffic expert witness, indicated that traffic generated by the child development center operates safely and efficiently and does not interfere with Key School traffic or the passage of emergency vehicles.

30. The Board credits Mr. Wells' testimony that traffic generated by the center operates safely and efficiently and does not block or seriously impede traffic on Hurst Terrace. The Board also credits his opinion that the 30-foot section of Hurst Terrace in front of the subject property safely and efficiently accommodates center pick-up and drop-off activity, curb parking on the opposite side of the street and two-way traffic.

Applicant's Response to Traffic and Parking Issues

31. In January, 2002, the Applicant put into effect an arrival and dismissal plan (also referred to as the "traffic plan") in order to maintain safe drop-off and pick-up of her students and to attempt to mitigate any negative impact that her center might

have on vehicular congestion on Hurst Terrace. The applicant's traffic plan requires that:

For Arrival,

a. No more than three cars may line up in front of the Applicant's house at any one time. If there are already three cars present, the plan requires parents to drive around the block and return.
b. The driver is to remain in the car.
c. The child is not to be let out of the car. When the car is next in line, the Applicant or one of her employees will open the car door and assist the child out.
d. After dropping off a child, a driver is not to make a U-turn, but to continue straight down the street.
e. Driveways are not to be blocked by parents dropping-off or picking-up children.
f. Drop-off is between 8:55 a.m. and 9:15 a.m., unless the child participates in early care.
g. If a parent is late, he/she is to park legally and walk the child to the center.

For Dismissal,

h. Parents are to arrive no earlier than 11:50 a.m. and are to remain in their cars.
i. No more than three cars may line up in front of the Applicant's house at any one time.
j. Children will be brought out to the parents' cars at 12:00 noon.
k. In other respects, dismissal will be handled in the same manner as arrival.
l. If a child is to be picked up early, the parent is to park legally on the opposite side of the street no later than 11:50 a.m. and to walk to the center.

The Applicant's traffic plan further states that:

m. Failure to abide by the plan more than twice will lead to expulsion from the center.
n. No parent socializing should be done in the area during drop-off and pick-up.
o. All caregivers should be familiar with the traffic plan.

32. The Applicant met with the principal of Key School to coordinate their respective students' arrivals and dismissals.

33. The Applicant also met with Lieutenant Patrick Burke to discuss parking and traffic issues.

She took his advice and began placing two orange rubber parking cones behind the curb in

front of the subject property in order to suggest to the public not to park there, but to leave the area available for center drop-off and pick-up.

34. The Board credits Mr.Wells' testimony that the Applicant's traffic plan is a good one and finds that it has helped alleviate traffic and parking congestion on Hurst Terrace.

35. Based on the above, the Board finds that the applicant's child development center, as conditioned, will not create any objectionable traffic conditions or unsafe conditions for the dropping-off or picking-up of children.

CONCLUSIONS OF LAW

Applicable Law

The Board of Zoning Adjustment is authorized to grant special exceptions where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Official Code § 6-641.07(g)(2) (2001); 11 DCMR § 3104. The Applicant is seeking a special exception pursuant to 11 DCMR §§ 3104 and 205 to continue the operation of the child development center located in her home at 2828 Hurst Terrace.

Sections 205.2 through 205.10 list the factors to be considered by the Board before deciding to permit a child development center as a special exception in an R-1 District. The final two provisions, §§ 205.9 and 205.10, direct the Board to seek input regarding the application from other District of Columbia agencies, which was done here.

The factors identified in §§ 205.2 and 205.5 through 205.8 were not at issue with respect to the application and so will be discussed summarily. Section 205.2 states that the child development center shall be capable of meeting all code and licensing requirements. As noted, the Department of Health has indicated that the Applicant's center is properly licensed and recommends approval of the special exception application.

Section 205.5 states that the center must be located and designed so as not to create any objectionable impacts on neighboring properties, for example, visual impacts or those due to noise or activity level. Again, there is no evidence in the record that the Applicant's child development center had any of these types of impacts on neighboring properties.

Section 205.6 states that the Board may impose special requirements on the operation of a child development center to protect nearby properties. During its November 12, 2002

decision meeting, the Board voted to impose certain conditions on the center to help mitigate any impact on nearby properties. These conditions are set forth below.

Section 205.7 deals with off-site play areas and does not apply to the Applicant's center. Nor is § 205.8 relevant, as it only applies when there is another center located within 1,000 feet of the Applicant's or more than one center located within a square.

Sections 205.3 and 205.4 are the provisions upon which the party and witnesses in opposition focused their testimony. These provisions state:

> 205.3 The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children or elderly persons.
>
> 205.4 The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.

Section 205.4 is supplemented by § 2101.1 ("Schedule of Requirements for Parking Spaces"), which states that child development centers in all zone districts shall provide one off-street parking space "for each 4 teachers and other employees." Along with any adverse impacts due specifically to traffic and parking, § 3104.1 also directs the Board to consider any general or overall adverse impacts on neighboring property which may be caused by the operation of the child development center.

Discussion of § 205.3

After hearing copious testimony concerning parking and traffic on Hurst Terrace, the Board concludes that the Applicant's child development center, with the conditions imposed by this order, meets the standard set forth in § 205.3. In order to address the traffic and parking concerns of her neighbors, the Applicant implemented a traffic plan, two infractions of which result in expulsion from her center. The Board accepts the conclusion of Mr. Wells, the Applicant's traffic expert, who testified that the plan is a "good one." Even opposition testimony acknowledged that the plan has helped alleviate traffic back-up on Hurst Terrace. The traffic plan, with certain modifications to strengthen it, is to remain in effect for the duration of this Order.

Significantly, the changed nature of the neighborhood within which Hurst Terrace lies was repeatedly testified to, by both the support and the opposition, as well as by the ANC. Since the Applicant's last Board Order in 1992, the neighborhood has become denser, with an expansion of nearby commercial establishments. This expansion has had a negative impact on traffic and parking in the Hurst Terrace neighborhood. It was also generally acknowledged that the Key School construction had a serious negative impact on traffic and parking congestion on Hurst Terrace. The Applicant testified that prior to

the construction at Key School, she had had no complaints from her neighbors about traffic and parking congestion.

After considering the diverse testimony concerning traffic and parking congestion on Hurst Terrace, the Board concludes that the Applicant's child development center does not create any unsafe condition for the dropping-off and picking-up of children, per the requirement of § 205.3. Further, the Board concludes that the center, by itself, does not create an objectionable traffic condition, as also required by § 205.3. The Board notes that the general increase in traffic and parking congestion in the neighborhood has been exacerbated by the recent construction at Key Elementary School, but will improve once the construction is completed and on-site parking at the school becomes available. However, the Board notes that the Hurst Terrace neighborhood is changing and that, even discounting the impact of the Key School renovations, traffic and parking congestion on Hurst Terrace have generally increased since the last Board Order in 1992. Because of the change in the neighborhood, the Board concludes that the center should be approved for a three-year term. Thus, in three years, the Board, the neighbors and the ANC will have an opportunity to re-evaluate any negative impacts caused by the operation of the child development center.

Discussion of § 205.4

Section 205.4 mandates that the center provide sufficient off-street parking to meet the reasonable needs of teachers, other employees and visitors. Section 2101.1 requires a child development center to provide one parking space for "each four teachers and other employees." Section 2101.1 also requires a single-family dwelling built after May 12, 1958 to provide one parking space for the dwelling.

The Applicant's home has an attached garage, with a private driveway leading to it. The garage provides one parking space for the dwelling, but the space is not required because the Applicant's house was built prior to 1958. During the hearing, there was testimony indicating the existence of another parking space (or two) in the Applicant's driveway, which would be available for use by the center, if necessary. Section 2116.4, however, states that "[r]equired parking spaces shall not be located in the area between a building line and lot line abutting a street." Therefore, the driveway cannot be considered a "parking space." It is, essentially, a drive aisle leading to the countenanced parking space in the garage. Therefore, there is no off-street parking available for the Applicant's child development center. The question remains, however, whether such off-street parking is needed.

The Board concludes that it is not. The Board's conclusion is based on its interpretation of the § 2101.1 mandate of one parking space for each four teachers and other employees. There are two possible interpretations of this mandate. One interpretation is that one parking space is needed for "up to" four employees, thus triggering the need for a parking

space with just one employee. The other interpretation is that the need for a parking space is triggered by the fourth employee, i.*e.*, with any fewer than four employees, no parking space is needed. The Board concludes that the latter interpretation is more reasonable and therefore adopts that interpretation.[1] Section 2101.1 plainly requires one parking space for "each" four employees, not one parking space for "up to" four employees. The Board is supported in its interpretation by DDOT, which states in its September 13, 2002 memorandum to the Board that "[a]s stated in the previous DDOT report dated September 25, 1992, the off-street parking requirement of one (1) parking space for every four (4) staff is not required for this site."

The Board further concludes that even with no off-street parking designated specifically for its use, there is still enough parking available to meet the reasonable needs of the center's teachers, other employees and visitors. First, the Applicant lives on the subject property, does not drive to work, and therefore does not require a parking space. Second, a child development center is not like a retail or service establishment where customers need a place to park their vehicles while they are in the establishment. Instead, parents of children attending the center do not require parking as they merely queue up, discharge or pick-up their children, and drive on. Third, of the Applicant's employees, only three are on-site at any one time and of the total of six employees, one regularly walks to work. Fourth, although the driveway is not technically a parking spot, practically speaking, it is open space available to be used for parking for the center. Lastly, as stated in Finding of Fact No. 5, there is ample on-street parking available in the area to accommodate the minimal needs of the center.

The Board notes, however, that it would be advantageous for the Applicant to pursue providing additional parking for her employees.

Discussion of the ANC's Recommendations

The Board is required to give "great weight" to both OP's recommendations and any recommendations made by the appropriate ANC. *See,* D.C. Official Code §§ 6-623.04 and 1-309.10(d) (2001). Further, the Board must articulate why the ANC does or does not offer persuasive advice, discussing each of the ANC's issues and concerns. *Id.* In this case, OP adopted all of the ANC's requested conditions except the time limit of five years and the last one, which stated that the special exception be granted only to the Applicant. This condition appeared in the earlier Board Orders authorizing the operation of the child care center. The ANC requested it appear again because there is a possibility that the

[1] The applicant has two full-time and four part-time staffpeople. Even under the latter interpretation of § 2101, this total of six employees, *i.e.*, more than four, would appear to trigger the requirement for a parking space under §2101.1. Section 2118.3, however, a "Rule of Interpretation" of Chapter 21 of Title 11, states that "[t]he number of ... employees shall be computed on the basis of the greatest number of persons to be employed at any one period." The applicant has a total staff of six, but only three of these six are employed at any one time. Three employees on site at any one time, *i.e.*, fewer than four, do not trigger the need for a parking space.

Applicant may retire in the near future and transfer the ownership of the home and the operation of the child care center to a new person. The ANC was concerned that this transfer could result in changes in the running of the center, possibly even jeopardizing compliance with any conditions imposed by the Board. The Board concludes that this condition is inappropriate here, but is sensitive to the ANC's fears concerning changes which may occur with new ownership and therefore is imposing a three year term limitation to address those concerns. Not only does the term limit address the ANC's concerns, but it is also reasonable in light of the issues of increased neighborhood density discussed earlier.

The ANC's first, second and third conditions are adopted by the Board, with minor modifications. The fifth condition, a term limit of five years, has been reduced to three years. The ANC's fourth requested condition, of reviewing and if appropriate, implementing, staggered arrivals, is unworkable in this case. The center only operates three hours each day, making it difficult, if not impossible to stagger arrival times and still have a reasonable amount of time within which to provide services to the children who attend the center.

One condition requested by the opposition is worth mentioning here. The requested condition would require that the subject property remain a single-family residence and not be wholly converted to a child development center. This condition is unnecessary because a child development center is not a matter-of-right use in an R-1 zone district. It is only permitted as a special exception and therefore must be approved by the Board. 11 DCMR §§ 201 and 205.1.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for the special exception under §§ 3104 and 205 for the continued operation out of her residence of a child development center with an on-site cap of 23 children. The Board further concludes that the special exception can be granted as 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 in accordance with the Zoning Regulations and Zoning Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of **THREE** (3) years from the date of the issuance of the Certificate of Occupancy for the child development center.

2. Enrollment shall be limited to a maximum of 23 children, between the ages of two and five years, on site at any one time.

3. The maximum number of employees, whether paid or volunteer, shall be four full-time, and two part-time, employees.

4. The hours of operation shall be from 9:00 a.m. until 12:00 p.m., Monday through Friday, September through May.

5. The maximum number of special events per year shall be three, including any open-house(s).

6. Prior to the occurrence of each special event, the Applicant shall provide 30 days' written notice of such event to her adjacent neighbors and to ANC 3D. Such notice shall be calculated to reach the ANC prior to a regularly-scheduled ANC meeting.

7. The timing of special events shall coincide with the hours of operation of the center.

8. The center shall, at all times of operation, have a traffic plan in place, including, at a minimum, the following provisions:

For Arrival and Dismissal:

a. Parents or other authorized persons (hereinafter referred to as "parent(s)") dropping-off or picking-up children attending the center may only queue up their vehicles directly in front of the subject property.
b. At no time can there be more than three vehicles in front of the subject property. If there are three vehicles already in line, the next parent's vehicle must continue down Hurst Terrace and drive around the block.
c. At no time, should a vehicle block a driveway.
d. There shall be no parent socializing which might impede the traffic flow during child drop-off and pick-up.
e. Parents must not park their vehicles on the opposite (east) side of Hurst Terrace and walk the child(ren) accompanying them across the street to or from the center.
f. At no time shall a child or children be let out of a vehicle on the driver's side.

For Arrival:

g. Drop-off shall be between 8:55 a.m. and 9:15 a.m. If a parent is late, he/she should park legally and walk the child(ren) accompanying him/her to the center.
h. Parents are to remain in their vehicles. The Applicant or one of her staff will open the vehicle door and assist the child(ren) out.
i. Parents are not to let children out of their vehicles until they are next in line and the Applicant or a staff member is available to assist the child(ren).

j. After dropping off a child, the parent is not to make a U-turn, but to continue straight down Hurst Terrace.

For Dismissal:

k. Children will be brought out to the parents' vehicles starting at 12:00 noon. Parents should line up no earlier than 11:50 a.m.

l. Parents are to remain in their vehicles. The Applicant or one of her staff will open the vehicle door and assist the child(ren) in.

m. After picking up a child, the parent is not to make a U-turn, but to continue straight down Hurst Terrace.

n. If a parent needs to pick up a child or children early, he/she must park legally on the opposite (east) side of Hurst Terrace (so as not to interfere with vehicles queuing up in front of the subject property to pick up children) prior to 11:50 a.m., and then walk to the center.

Generally:

o. All caregivers shall be made familiar with, and told to abide by, the provisions of this traffic plan.

p. Failure to abide by the provisions of this traffic plan more than twice will cause the child(ren) of the non-compliant parent to be expelled from the center.

9. During drop-off and pick-up times, there shall be a staff member stationed outside the center monitoring the center traffic, assisting in the drop-off and pick-up of children and escorting the children to and from vehicles and the child development center.

10. Parents shall be notified at least once each year, and more often as necessary, of the provisions of the traffic plan, of proper and safe drop-off and pick-up procedures, and of the consequences of non-compliance with the traffic plan.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., David A. Zaidain, and Anne M. Renshaw, to grant. Carol J. Mitten not present, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each voting Board member has approved the issuance of this Order granting the application.

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 2 1 2003

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, 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.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. 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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16915

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 1 2003, a copy of the foregoing Decision and Order was mailed first class, postage prepaid, or delivered via inter-agency mail to each party and public agency who appeared and participated in the public hearing and who is listed below:

Barbara Schriever Allan
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Advisory Neighborhood Commission 3D
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Washington, D.C. 20002

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning