Notice Provided:

16970 - Application of National Child Research Center, pursuant to 11 DCMR § 3104.1, for a special exception to continue an existing child development center (last approved by BZA Order No. 16307) with morning and afternoon programs for 120 children ***at any one time***, ages 2 1/2 to 5 years, and **38 staff** in all floors of the **existing buildings** on the site under section 205, and the construction of additions to the existing buildings (the additions to the buildings do not require variance relief) in an R-1-B District at premises 3209 Highland Place, NW (Square 2072, Lot 30 (855 & 866)) *["at any one time", "38 staff", and "existing buildings" emphasized].*

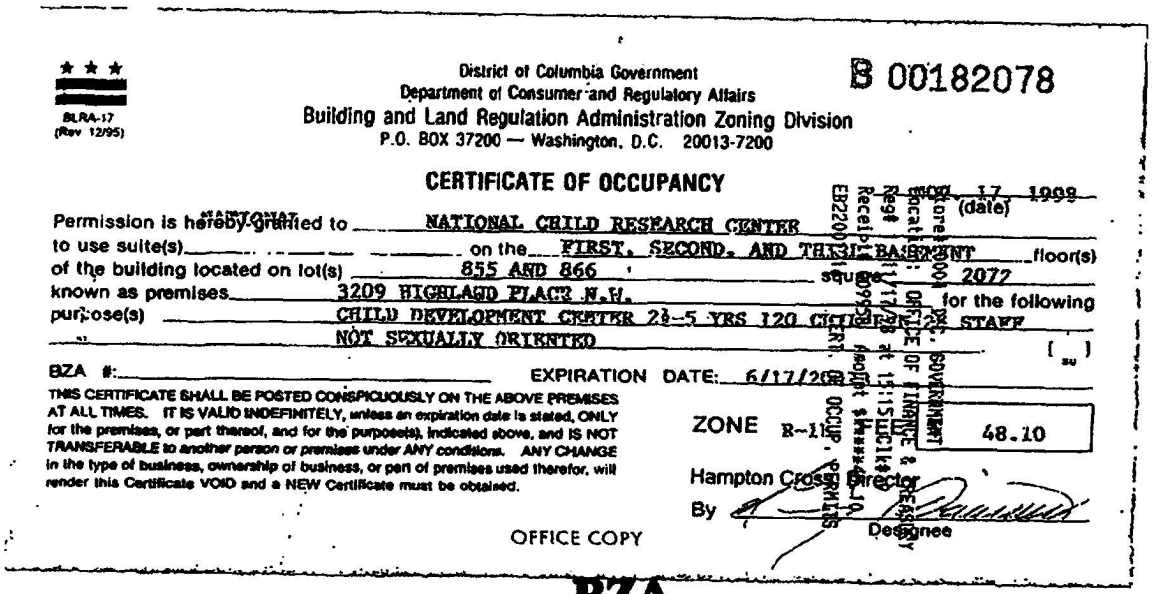
Comment: The application does what it should, seeking clarification of the issue "at any one time" and approval to have "38 staff". But, the application appears to seek the approval to operate in more than one building inadequately given the provisions of § 2516.

Previous BZA Summary Order:

16307 - Application of National Child Research Center, pursuant to 11 DCMR § 3108.1 and 3107.2 for a special exception under Section 205 to establish a child development center for 120 students ages 2½ to five years and 28 staff in the basement through third floor of **an existing building**, and a variance from the provisions of Section 2101 for off-street parking in an R-1-B District at premises 3209 Highland Place, NW (Square 2072, Lot 30 (855 & 866)) *["an existing buildings" emphasized].*

This case was APPROVED May 6, 1998, for the above property and the above-described building (in the singular), subject to an eight year time limit and eight, mostly operational, conditions. The Order contains neither the expression "at any one time" nor approves use for more than the specified building.

Current Certificate of Occupancy *(issued November 17, 1998; expiration date unclear but see page 8):*



★ ★ ★

BLRA-17
(Rev 12/95)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

B 00182078

CERTIFICATE OF OCCUPANCY

Permission is hereby granted to NATIONAL CHILD RESEARCH CENTER
to use suite(s) _____ on the FIRST, SECOND, AND THIRD BASEMENT floor(s)
of the building located on lot(s) 855 AND 866 square 2072
known as premises 3209 HIGHLAND PLACE N.W. for the following
purpose(s) CHILD DEVELOPMENT CENTER 2½-5 YRS 120 CHILDREN 28 STAFF
NOT SEXUALLY ORIENTED

BZA #: _____ EXPIRATION DATE: 6/17/20[illegible]

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

ZONE R-1[illegible]

Hampton Cross, Director
By _____
Designee

OFFICE COPY

Nov 17 1998 (date)

48.10

BZA
Case No. 16970
Exhibit No. 108

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.108

Pertinent Regulations:

199 **DEFINITIONS** *[selected, emphasis added except for terms being defined, where the terms themselves are emphasized in the original]*

199.1 When used in this title, the following terms and phrases shall have the meanings ascribed:

Building a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. **When separated from the ground up or from *the lowest floor up, each portion shall be deemed a separate building,*** except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

Building, accessory **a subordinate building** located on the same lot as the main building, **the use of which is incidental to the use of the main building**.

Child/Elderly Development Center a building or part of a building, other than a child development home or elderly day care home, used for the licensed care, education, counseling, or training of individuals fifteen (15) years of age or less and/or for care of elderly individuals, totaling six (6) or more persons, who are not related by blood or marriage to the caregiver and who are present for less than twenty-four (24) hours per day. This definition encompasses facilities generally known as child care centers, pre-schools, nursery schools, before-and-after school programs, senior care centers, elder care programs, and similar programs and facilities. **A child/elderly development center includes the following accessory uses: counseling, education, training, and health and social services for the parents or principal guardians of children attending the center.** *(46 DCMR 8286, see page 6 hereof)*

Use, Accessory a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use.

199.2 For the purpose of this title, the following definitions shall not be held to modify or affect in any way the legal interpretations of these terms or words where used in other regulations:

(a) Words in the present tense shall include the future tense;
(b) **Words in the singular number shall include the plural number, and words in the plural number shall include the singular number;**
(c) The word "lot" shall include the words "plot" and "parcel";
(d) **The word "shall" is mandatory and not discretionary;**
(e) The word "person" shall include a corporation as well as an individual;
(f) The words "occupied" and "used" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied, offered for occupancy"; and
(g) Words not defined in this section shall have the meanings given in *Webster's Unabridged Dictionary*.

205 CHILD/ELDERLY DEVELOPMENT CENTERS (R-1)

205.1 Use as a child/elderly development center shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

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

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.

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

205.6 The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties.

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

205.8 The Board may approve more than one (1) child/elderly development center in a square or within one thousand feet (1,000 ft.) of another child/elderly development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

205.9 Before taking final action on an application for use as a child/elderly development center, the Board shall submit the application to the D.C. Departments of Transportation and Human Services, the D.C. Office on Aging, and the D.C. Office of Planning for review and written reports.

205.10 The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District of Columbia.

2516 EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts)-Aug. 11, 1989

2516.1 If approved by the Board of Zoning Adjustment as a special exception under § 3104, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of this section.

2516.2 This section applies to construction on a lot that is located in, or within twenty-five feet (25 ft.) of, a Residence District.

2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the new application, four (4) site plans for all new rights-of-way and easements, and existing and preliminary landscaping and grading plans with approximate building footprints; provided:

(a) The applicant shall also submit, either with the original application or at a later time, final landscaping and grading plans and two (2) sets of typical floor plans and elevations; and

(b) If the applicant elects to submit the plans referenced in paragraph (a) of this subsection at a later date, the Board's original approval shall be conditional, subject to a later public hearing and final decision on the project as a whole.

2516.4 The number of principal buildings permitted by this section shall not be limited; provided, that the applicant for a permit to build submits satisfactory evidence that all the requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to § 2507), and §§ 3202.2 and 3202.3 are met.

2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:

(a) The front of the building shall be the side upon which the principal entrance is located;

(b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the zone district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;

(c) A rear yard shall be required; and

(d) If any part of the boundary of a theoretical lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

2516.6 In providing for net density pursuant to § 2516.11, the Board shall require at least the following:

(a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title;

(b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five feet (25 ft.) in width, but need not be paved for its entire width;

(c) If there are not at least two (2) entrances or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty feet (60 ft.); and

(d) The requirements of paragraphs (b) and (c) of this subsection may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future\ development of the neighborhood; provided, that the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking.

2516.7 Where not in conflict with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Code, 2001 Ed. §§ 6-601.01 to 6-601.09 (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & 1999 Supp.))), the height of a building governed by the provisions of this section, in all zone districts, shall be measured from the finished grade at the middle of the front of the building.

2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of § 410, relating to a group of one-family dwellings, flats, or apartment houses, or a combination of such buildings.

2516.9 The proposed development shall comply with the substantive provisions of this title and shall not likely have an adverse effect on the present character and future development of the neighborhood.

2516.10 **Before taking final action on an application under this section, the Board shall refer the application to the D.C. Office of Planning for coordination, review, and report, including:**

(a) The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; provided, that the planning considerations that are addressed shall include, but not be limited to:

(1) Public safety relating to police and fire concerns;

(2) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;

(3) Public education;

(4) Recreation;

(5) Parking, loading, and traffic;

(6) Urban design; and

(7) As appropriate, historic preservation and visual impacts on adjacent parkland;

(b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design, and screening of structures;

(c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;

(d) The impact of the proposed development on neighboring properties; and

(f)[1] The findings, considerations, and recommendations of other District government agencies.

2516.11 The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

3104 SPECIAL EXCEPTIONS

3104.1 The Board is authorized under § 8 of the Zoning Act, D.C. Code, 2001 Ed. § 6-641.07(g)(2) (formerly codified at D.C. Code § 5-424(g)(2) (1994 Repl.)), to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map subject in each case to the special conditions specified in this title, as follows: *[selected]*

TYPE OF SPECIAL EXCEPTION	ZONE DISTRICT	SECTIONS IN WHICH THE CONDITIONS ARE SPECIFIED
Building lot control	Any R District or within 25 feet of an R District	§ 2516
* * * * *	* * * * *	* * * * *
Child/elderly development center	Any R District	§ 205

[1] The Zoning Regulations have omitted paragraph "(e)" since adoption in 1989, an apparent error of identification, not an omission of an additional element.

3203 CERTIFICATES OF OCCUPANCY

3203.1 Except as provided in §§ 3203.7, 3203.8, or 3203.9, **no person shall use any structure, land, or part of any structure or land for any purpose other than a one-family dwelling until a certificate of occupancy has been issued to that person stating that the use complies with the provisions of this title and the D.C. Construction Codes Supplement, Title 12 DCMR.** * * * * *

3203.3 **Except in the case of a church, all certificates of occupancy shall be conspicuously posted in or upon the premises to which they apply so that they may be seen readily by anyone entering the premises.**

Excerpts from Zoning Commission Final Rulemaking 98-8, "Text Amendment – Child Development Centers) September 13, 1999 (46 DCR 8284-8289, October 15, 1999)

> "Over the past few years, the Board of Zoning Adjustment (BZA) has been requested to approve special exceptions for a number of child development centers (CDCs) with programs and uses not previously accommodated in CDCs, which typically provide various types of day care for children under 15 years of age. These additional uses have included adult education, adult counseling, parenting classes and senior day care in individual and group sessions." * * * * (page 8284).

The rulemaking elevated the matter of right number of persons to whom care could be provided as a matter of right use in the most restrictive residence district from 15 to 16 (at § 330.5(d) of the Zoning Regulations, appearing at DCR page 8287), changed the definition to cover both child and elderly development centers (page 8286, and added the following sentence to the definition itself *(ibid.)*:

> A child/elderly development center includes the following accessory uses: counseling, education, training and health and social services of the parents of principal guardians of children attending the center.

In the context of the initial discussion, it seems clear that the Commission intended to add a range of accessory uses that could be provided to the parents and principal guardians of the individuals to which the principal use, i.e., the child or elderly development center, provides care, education, counseling or training. When these functions are provided by the program to the enrollees themselves, this is part of their primary mission and is a primary use, not an accessory one.

Moreover, it should be noted that the Zoning Commission has in at least one case seen fit to include a range of other buildings as accessory uses, explicitly doing so within the context of its definition of "public school," a term that also uses the undefined term "campus." Had the Commission intended a range of other buildings on a single lot to apply to child or elderly development centers, or had the Office of Planning encountered such uses with campuses when developing recommendations for case 98-8, it could have done so. Neither did so, and the child development center's own definition, juxtaposed to § 2516, requires that it be accommodated within either its principal building or that it seek and earn relief under § 2516 as well as § 205 when its program would operate within more than one building on its lot.

Issues To Be Presented to BZA:

Does not Section 2516 Apply to the Application Now Pending?

- The existing playhouse house/library (when renovated and occupied for use as part of school program relative to effective date of section 2516?) and
- The new third building ("carriage house," or any addition of similar bulk to that proposed connected to the existing playhouse)?

What Certificate of Occupancy should be in place, if any, to cover use of the existing playhouse?

Is the playhouse still an "accessory building", occupied officially as a caretaker's cottage per the 1930s Certificate of Occupancy research uncovered?

If Section 2516 applies either to what now exists for primary use or that proposed, can the case proceed as advertised or must it be expanded to include notice of same? If the case cannot proceed to examine any use of the existing playhouse and/or the additional proposed carriage house building, then parties should only have a unique interest in the existing main building, not parts of the program that operate or would operate in parts the application does not cover.

[The above discussion does not relate to the gazebo or to the bicycle/garden storage building, both of which appear to be clearly "accessory" in character and use, as they now exist and are planned.]

Other Issues:

Under what circumstances need a Certificate of Occupancy be sought and issued to occupy a structure or building when the use is accessory in nature? Does this change if the building is itself "accessory"?

Note that NCRC sought 15 years' approval even though it had been granted only 8 by the BZA's Order.

(PRINT OR TYPE WITH BLACK INK ONLY — DO NOT WRITE IN SHADED AREAS)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

APPLICATION FOR CERTIFICATE OF OCCUPANCY

Date 9/2/98

APPLICATION FEE $25.00 NON-REFUNDABLE — ISSUANCE FEE (see fee schedule) — Receipt # — Treas. #

INFORMATION ON PROPOSED BUSINESS

(1) Address of Business 3209 Highland Place, NW — Suite/Room #
(2) Telephone No. of Business 363-8777 — Lot 30 (855 & 866) — Square 2072
(3) Trade Name of Business National Child Research Center
(4) Is Business Incorporated? ☐ No ☒ Yes (Attach Letter of Good Standing and complete Line 8)
(5) President Susan Piggitt — Vice President — Secretary/Treasurer
(6) Is Business a Partnership? ☒ No ☐ Yes
(7) Business Owner Natl Child Research Ctr. — 363-8777
(8) Business Owner's Home Address (See Instructions) 3209 Highland Pl NW — Tel. No. (days) — Zip Code 20008

INFORMATION ON OCCUPANCY

(9) ☐ Ownership Change ☐ Partial Occupancy ☐ New Bldg. ☐ Use Change ☐ Load Change BZA No ☐ 16307
(10) Proposed Use of Business Child Development Center — 2½ - 5 yr olds
120 children, 28 staff — Expires 6/17/2003
(11) Is Business Sexually Oriented According to D.C. Zoning Regulations? ☒ No ☐ Yes
(12) Proposed Occupancy Load 120 children, 28 staff — Square Feet Occupied 9025
(13) Which Floors to be Occupied 1st, 2nd, 3rd — Basement? yes
(14) Prior Use Child Development Center

INFORMATION ON ENTIRE BUILDING

(15) Building Owner National Child Research Center — Tel. No. (days) 363-8777
(16) Building Owner's Address 3209 Highland Place, NW. — Zip Code 20008
(17) Materials of Building Brick
(18) Square Feet Occupied 9025 — No. of Floors 3 — Basement? yes

ATTESTATION AND SIGNATURE

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia

(19) IF OWNER OF BUSINESS — Signature — Date
IF AUTHORIZED AGENT FOR OWNER OF BUSINESS (Attach Authorization)
(20) Name of Agent Matthew S. Watson (Print Clearly) — Signature Matthew S. Watson — Date 9/2/98
(21) Address of Agent 1701 Q Street, NW — Zip Code 20009

OFFICE USE ONLY

INFORMATION DESK

(24) Premises Condemned ☒ No ☐ Yes Cleared By — Date 9-3-98
(25) Building in RLA Zone ☒ No ☐ Yes Cleared By — Date 9-3-98
(26) Residential ☐ No ☐ Yes Smoke Det Info Given By — Date 9/2/98

LICENSE BRANCH

(27) Licenses Required No Business License
(28) — Reviewed By — Date 9/10/98

ZONING OFFICE

(29) Zone R-1-B — BZA No. 16307 - 6/17/98
(30) Prior Use Child Dev. Center - 120 children — Expires w/in 15 yrs 6/17/2003
(31) Certificate # — Date Issued — BZA No. — ☐ Approved ☐ Disapp
(32) Accepted for Filing by — Date 9/9/98

EXAMINER'S USE

(33) Prior Use Code — Proposed Use Code
(34) Use Change ☐ No ☒ Yes Inspect. Required ☐ No ☒ Yes By — Date 9/9/98
(35) Inspection Fee $ — Issuance Fee $ 48.10 — Date 9/17/98
(36) Approved for Issuance by — Date

INSPECTION BRANCH

PROP

(37) Date of Scheduled C/O Inspections 9/14/98
(38) Inspection Status Approved ☐ Disapproved ☐ By — Branch — Date
(39) Inspector's Signature — Printed Name
(40) Reason for Disapproval

OCCUPANCY PERSONNEL

(41) ☒ Approved ☐ Denied ☐ Cancelled
By
(42) Reason for Cancellation/Denial
(43) Certificate of Occupancy No B0018207 — Date of Issuance 11-17-98
Bldg 9-15-98 Elec 9-18-98 Plumb 9-14-98 Fire 11-3-98 Zoning

THIS APPLICATION BECOMES VOID AFTER (90) CALENDAR DAYS

(*) Please see Attached BZA # 16307