GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

December 2, 2004

Andrea Cannon
1235 Queen Street, N.E.
Washington, D.C. 20002

Re: BZA Application No. 17280 (541 Newcomb Street, N.E.) Cannon

Dear Ms. Cannon:

The Office of Zoning (OZ) received the above-cited application on December 1, 2004. A review of your filing documents determined that your statement of support addresses the test for a variance instead of the burden of proof for the special exception under section 205 (Child Development Center) sought by your application. For your convenience, I have enclosed with this letter a copy of section 205 of the Zoning Regulations, and an OZ handout entitled "Applicants Burden of Proof for Variance and Special Exception Applications". As described in section 205, the Board of Zoning Adjustment ("Board") will be looking for a detailed written description of how the child development center will operate. For example, the Board will be interested in knowing the maximum number of children and staff, days and hours of operation, parking arrangements for visitors and staff, how the children will be dropped off and picked up, etc. So that your case may be scheduled for hearing on the next available hearing date, please supplement your application with the aforementioned information as soon as possible.

Please call Cliff Moy, Supervisory Zoning Specialist on (202) 727-0348, if you have any questions relevant to the foregoing.

SINCERELY,

JERRILY R. KRESS, FAIA
Director, Office of Zoning

rsn
Enclosure

BZA
Case No. 17280
Exhibit No. 12

Board of Zoning Adjustment
District of Columbia
CASE NO. 17280
EXHIBIT NO. 12

203.11 If the Zoning Administrator determines that an application for a Home Occupation Permit appears to meet the conditions of §§ 203.4 through 203.8, but to be inconsistent with the general purpose and intent of this section, the Zoning Administrator may certify the application to be decided as an appeal by the applicant to the Board of Zoning Adjustment.

203.12 In making the determination pursuant to § 203.11, the Zoning Administrator may consider, but not be limited to, the cumulative impact of one (1) or more home occupations.

SOURCE: Final Rulemaking published at 35 DCR 6916, 6918 (September 16, 1988).

204 ACCESSORY BUILDINGS (R-1)

204.1 The following buildings shall be permitted as accessory buildings in R-1 Districts incidental to the uses permitted in this chapter:

(a) Private garage, subject to the special provisions of chapter 23 of this title;

(b) Private stable as accessory use to a dwelling and under conditions specified in § 208; and

(c) Other buildings or structures customarily incidental to the uses permitted in R-1 Districts under the provisions of this chapter.

SOURCE: § 3101.6 of the Zoning Regulations effective May 12, 1958; renumbered by Final Rulemaking published at 35 DCR 6916, 6918 (September 16, 1988).

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.

SOURCE: Final Rulemaking published at 29 DCR 4913, 4917 (November 5, 1982); renumbered by Final Rulemaking published at 35 DCR 6916, 6918 (September 16, 1988); amended by Final Rulemaking, 46 DCR 8284, 8286 (October 15, 1999); and by Final Rulemaking, 49 DCR 2750 (March 22, 2002).

~~206 PRIVATE SCHOOLS AND STAFF RESIDENCES~~ (R-1)

206.1 Use as a private school, but not including a trade school, and residences for teachers and staff of a private school, 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.

206.2 The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions.

206.3 Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile.

Form 121 – Side 2
(Revised 03/15/02)

Case No._____

APPLICANT'S BURDEN OF PROOF FOR VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

Subsection 3104.1:

Pursuant to authority contained in the Zoning Act, the Board is authorized to grant special exceptions, as provided in this Title, where, in the judgment of the Board, those 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 Maps, subject in each case to the special conditions specified in Title 11 DCMR.

In addressing these standards the applicant must address the following:

☐ 1). How the proposed special exception will be consistent with the general intent and purpose of the Zoning Regulations and Map; and

☐ 2). How allowing the use will not adversely affect the use of the neighboring property – ie. traffic, noise, lighting, etc.

In addition, as all special exceptions are of a specific type, each type is represented in a certain section of the Zoning Regulations. Section 3104.1 sets forth the general standards that must be met for all types of special exception relief, while the other provisions cited in the Zoning Administrator's memorandum detail the remaining standards that must be met.

For example, a special exception for a private school in a residential district involves two Sections of the Zoning Regulations – 3104.1 (regulating special exceptions in general) and 206 (regulating private schools). To meet the burden of proof one would provide evidence to address the general standards of Section 3104.1, as well as the more specific standards of 206. Beware the provisions sometimes overlap, but generally one would prepare their case as follows:

☐ 1). **206.1 - Refers applicant to 3104.1**
Indicate how granting a special exception for the private school will be in harmony with the general purpose and intent of the Zoning Regulations; and present evidence demonstrating that the private school will not tend to adversely affect the use of the neighboring property.

☐ 2). **206.2**
Indicate how the location of the private school will not be objectionable to adjoining and nearby property because of noise, traffic, number of students or otherwise objectionable conditions;

☐ 3). **206.3**
Indicate the number of parking spaces being provided and whether the required number of spaces will be provided.

If relief is being sought for a special exception and a variance, be sure to address all of the applicable special exception provisions, then address the variance standards for each variance.

NOTE:

For further information on the Board of Zoning Adjustment public hearing process, please visit the Office of Zoning website at http://www.dcoz.dc.gov. All applications are referred for review and recommendation to the D.C. Office of Planning (OP) and the Advisory Neighborhood Commission within which the affected property is located. Their reports are given "great weight" in the BZA decision-making process. Applicants are strongly recommended, at the time of filing a Form 120 application, to make contact with these agencies to discuss the merits of their application. OP can be reached at (202) 442-7602.