

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19677 of Plant the Seed Youth Treatment Services, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 203.1(i) to allow a health care facility for a maximum of 15 persons in the R-2 Zone at premises 5212 Astor Place, S.E. (Square 5308, Lot 25).¹

HEARING DATES: January 31, February 21, and April 17, 2018
DECISION DATE: April 17, 2018

DECISION AND ORDER

This application was submitted on November 15, 2017 by a representative of Plant the Seed Youth Treatment Services (the “Applicant”), the lessee of the property that is the subject of the application.² The application requested special exception relief to allow operation of a health care facility for a maximum of 15 persons in the R-2 district at 5212 Astor Place S.E. (Square 5308, Lot 25). After a public hearing, the Board of Zoning Adjustment (“Board”) voted to grant the application subject to one condition.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated December 13, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Councilmember for Ward 7, and the chairman as well as the four at-large members of the D.C. Council. Pursuant to 11 DCMR Subtitle Y § 402.1,

¹ Consistent with a referral memorandum from the Office of the Zoning Administrator dated November 16, 2017, the Applicant initially requested a special exception under Subtitle U § 203.1(e) to allow an increase in the occupant load of an existing community-based institutional facility from six to 15 persons. (Exhibit 12.) A revised memorandum from the Office of the Zoning Administrator, dated February 12, 2018, stated the necessary relief as a special exception pursuant to Subtitle U § 203.1(i) for an increase in the occupant load of an existing health care facility from six to 15 persons. (Exhibit 41.) The application was amended accordingly. (See Exhibit 42.) The Applicant has not yet established a health care facility at the subject property, where that use is permitted, with a maximum of as many as eight residents, as a matter of right. (See Subtitle U § 202.1(j).) Approval by special exception is required for an increase in the occupant load beyond the number of residents permitted as a matter of right, in accordance with Subtitle U § 203.1(i).

² The subject property is owned by Joyce Ukwuani and Godwin Ukwuani, who authorized the application on behalf of Plant the Seed Youth Treatment Services by its representative, Michael Davis. (See Exhibit 38.)

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on December 13, 2017 the Office of Zoning mailed letters providing notice of the hearing to the Applicant; the owners of all property within 200 feet of the subject property; Advisory Neighborhood Commission (“ANC”) 7E, the ANC in which the subject property is located; and Single Member District/ANC 7E06. Notice was published in the *District of Columbia Register* on December 15, 2017 (64 DCR 12672).

Party Status. The Applicant and ANC 7E were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application by the Marshall Heights Civic Association (“MHCV”).

Applicant’s Case. The Applicant provided evidence and testimony about the planned health care facility use of the subject property, and asserted that the proposal would satisfy all requirements for approval of the requested zoning relief.

OP Report. By memorandum dated February 13, 2018, the Office of Planning recommended approval of a special exception under Subtitle U § 203.1(e)³ to increase the occupant load of the Applicant’s existing health care facility from six to 15 persons, subject to a condition limiting the number of residents to 15, not including supervisors and staff. (Exhibit 43.)

DDOT. By memorandum dated January 17, 2018, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 35.)

ANC Report. At a public meeting on January 9, 2018, with a quorum present, ANC 7E adopted a resolution in opposition to the application citing “community dissatisfaction” and objecting that the Applicant’s proposal would be “a city-wide center that wants to be planted in Marshall Heights where we have currently an inundation of service facilities.” The ANC also asserted that “the size of the property as well as the amount of people would not be feasible for the safety of the occupancy and the community.” (Exhibit 36.)

Party in opposition. The Marshall Heights Civic Association described its members’ “dissatisfaction...regarding this program being operated in the neighborhood” and cited the opposition of ANC 7E in testifying against approval of the application. According to MHCA, approval of the Applicant’s proposed use of the subject property would create adverse impacts on neighboring properties especially relating to safety concerns, including “congregation of youth and other substance abuser[s] in the immediate area.” The party in opposition also commented unfavorably on the prior institutional use of the subject property and the “[p]revalence of non-profit, for-profit and government managed service facilities designed for high risk populations concentrated in one geographical area,” and asserted that the Applicant had made “misleading” statements about the purpose of the proposed facility in seeking community support for the application.

³ In testimony at the hearing, the OP representative referenced the amended relief under Subtitle U § 203.1(i) in recommending approval of the application.

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Persons in support. The Board received heard testimony from persons in support of the application describing the need for the proposed health care facility use.

Person in opposition. The Board received a letter from a person in opposition to the application, who complained about the adverse impacts created by a “group home for young boys,” apparently unaffiliated with the Applicant and at a different location, and asserted that the neighborhood contains too many such facilities.

FINDINGS OF FACT

1. The subject property is located on the north side of Astor Place, S.E. approximately mid-block between 53rd and 51st Streets. (Square 5308, Lot 25).
2. The subject property is rectangular, 40 feet wide and 100 feet deep, with a lot area of 4,000 square feet.
3. The subject property is improved with a two-story semi-detached building providing approximately 3,400 square feet of space, and containing nine bedrooms. The building is currently unoccupied and was previously used by a residential education program.
4. The Applicant was issued a certificate of occupancy on July 6, 2017 authorizing use of the subject property as a “community based residential facility for 6 residents and 2 staff” but has not yet established any use in the building. The Office of the Zoning Administrator later determined that the use planned by the Applicant will, for zoning purposes, be considered a health care facility. (Exhibit 41.)
5. A health care facility with up to eight residents may be permitted as a matter of right at the subject property.⁴ (Subtitle U § 202.1(j).) The Applicant seeks special exception approval, pursuant to Subtitle U § 203.1(i), to operate a health care facility for a maximum of 15 persons to provide residential substance abuse treatment for male youths between the ages of 13 and 20 at the subject property. No employees of the facility will live at the subject property.
6. The Applicant testified that the planned health care facility will operate as a 28-day program with a four-to-one ratio of residents to staff and services provided by licensed social workers as well as medical personnel. At least four employees will be present at all times. The residents will participate in an in-patient treatment program, and will not leave the premises except under the supervision of the facility’s staff. The program will utilize

⁴ Pursuant to Subtitle U § 202.1(j), the uses permitted as a matter of right in the R-2 zone include a health care facility for not more than six persons not including resident supervisors or staff and their families; the facility may accommodate up to eight persons, not including resident supervisors or staff and their families, so long as no existing health care facility for seven or more persons is located in the same square or within a radius of 1,000 feet from any portion of the subject property.

- security measures in addition to the supervision of residents by employees, including the installation of surveillance cameras both inside (on each floor of the facility) and outside the building (at the front entrance, on the side, and at the rear of the property).
7. The Applicant did not propose any enlargement of the existing building, or any change to its current residential appearance.
 8. A driveway is located along the western edge of the subject property, leading to a paved area at the rear of the lot. The paved area is sufficiently large to provide at least two parking spaces consistent with the size requirements imposed by the Zoning Regulations. The parking area is not visible from the street. Views from adjoining properties are limited by existing fences and trees.
 9. Properties in the vicinity of the subject property are developed primarily with residential uses, generally a mix of detached and semi-detached principal dwellings as well as some small multi-family buildings. Two apartment houses, each three stories in height and containing approximately 12 units, are located immediately to the west of the subject property. The area also contains some institutional uses and several churches, including one located on the abutting property to the north of the subject property.
 10. No other health care facility operates in the same square or within 500 feet of the subject property.
 11. The subject property is located in an R-2 zone, which like all Residence House (R) zones is designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.)
 12. The provisions of the R zones are intended to: (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)
 13. The purpose of the R-2 zone is to: (a) provide for areas with semi-detached dwellings; and (b) protect these areas from invasion by denser types of residential development. (Subtitle D § 300.4.) The R-2 zone is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached dwellings. (Subtitle D § 300.5.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under Subtitle U § 203.1(i) to allow operation of a health care facility for a maximum of 15 persons in the R-2 district at 5212 Astor Place, S.E. (Square 5308, Lot 25). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception 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 to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle U § 203.1(i), a health care facility use for nine to 300 persons, not including resident supervisors or staff and their families, may be permitted in the R-2 zone by special exception, subject to conditions.⁵ The conditions applicable to this application require that (a) no other property containing a health care facility is located either in the same square or within a radius of 500 feet from any portion of the subject property; (b) adequate, appropriately located and screened off-street parking must be available to provide for the needs of occupants, employees, and visitors to the facility; (c) the proposed facility must meet all applicable code and licensing requirements; and (d) the facility must not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

Based on the findings of fact, the Board concludes that the application satisfies the requirements for special exception relief in accordance with Subtitle U § 203.1(i) and Subtitle X, chapter 9. The Board finds no evidence that any other property containing a health care facility is located either in the same square or within a radius of 500 feet from any portion of the subject property.

The proposed health care facility will have adequate, appropriately located and screened off-street parking available to provide for the needs of occupants, employees, and visitors to the facility. In this case, the subject property has a parking area large enough for at least two vehicles to park in zoning-compliant off-street spaces at the rear of the building, in satisfaction of the parking requirement for zoning purposes. The parking area is located immediately outside the building, and is screened from view from the street and from other properties. The health care facility is not likely to generate a large demand for parking, since residents will not drive to or maintain vehicles at the facility, and the number of employees, as well as the number of visitors, if any, will be relatively small.

⁵ Pursuant to Subtitle U § 200.2, the Applicant's property, which is located in the R-2 zone, is governed by provisions applicable in R-Use Group B. Accordingly, the condition stated in Subtitle U § 203.1(i)(1), which applies to properties subject to provisions applicable in R-Use Group A, does not apply to this application. The condition stated in Subtitle U § 203.1(i)(6), concerning the cumulative effect of facilities, is also inapplicable to this application because no other health care facility is currently in operation in the same square or within 500 feet of the subject property.

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The Board concludes that the proposed facility will meet all applicable code and licensing requirements. The Applicant is not proposing any changes to the existing building. As noted by the Office of Planning, the proposed facility must be certified by the D.C. Department of Behavioral Health as a provider of substance use disorder treatment and recovery.

The Board also concludes that the Applicant's proposed health care facility use will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. As previously noted, the facility is not likely to generate a substantial amount of traffic to the site, given the relatively small size of the planned operation. DDOT concurred that the proposed use would have no adverse impacts on the travel conditions of the District's transportation network. Similarly, the facility is not likely to have any adverse impact related to noise or operations, since the facility will offer in-patient services entirely inside the existing building, and residents will not leave the premises except under the supervision of the facility's staff.

The ANC and party in opposition both argued that the neighborhood has "an inundation of service facilities"⁶ but they did not present substantial evidence that would cause the Board to conclude that approval of the requested zoning relief would have an adverse impact on the neighborhood because of the number of similar facilities in the area. The Zoning Regulations permit a health care facility at the subject property with as many as eight residents as a matter of right. No other health care facility is located near the subject property. Based on the evidence in the record, the Board concludes that the Applicant's planned health care facility, with a maximum of 15 residents, will not cause an adverse impact on the neighborhood because of the number of similar facilities in the area. However, the requested zoning relief is approved subject to a four-year term of approval so that conditions may be reassessed in the near future.

In accordance with Subtitle X § 901.2, the Board concludes that approval of the requested special exception 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. As discussed above, the Board does not find that the planned health care facility will create any adverse impacts on the use of neighboring property. Approval of the requested special exception will be in harmony with the design of the Residence House zones to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses, and consistent with the intent of the R zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; allow for limited compatible accessory and non-residential uses; and allow for the matter-of-right development of existing lots

⁶ ANC resolution in opposition to the application. (Exhibit 36.)

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of record. Consistent with the purpose of the R-2 zone specifically, approval of the requested zoning relief will maintain the existing semi-detached dwelling on the subject property.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP’s recommendation that the application should be approved in this case.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case ANC 7E expressed opposition to the application, citing “community dissatisfaction” and objecting that the Applicant’s proposal would be “a city-wide center that wants to be planted in Marshall Heights where we have currently an inundation of service facilities.” The ANC also asserted that “the size of the property as well as the amount of people would not be feasible for the safety of the occupancy and the community.” (Exhibit 36.) For the reasons discussed above, the Board did not find the ANC’s views persuasive and instead concludes that the Applicant has provided sufficient evidence to demonstrate compliance with zoning requirements for a health care facility with 15 residents at the planned location.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception pursuant to Subtitle U § 203.1(i) to allow operation of a health care facility for a maximum of 15 persons in the R-2 zone at 5212 Astor Place S.E. (Square 5308, Lot 25). Accordingly, it is **ORDERED** that the application is **GRANTED SUBJECT TO THE FOLLOWING CONDITION:**

1. This approval shall be valid for a term of FOUR YEARS, beginning on the effective date of this order.

VOTE: 4-0-1 (Carlton E. Hart, Frederick L. Hill, Lorna L. John, and Peter G. May to APPROVE; Lesylleé M. White not present, not voting).

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 24, 2018

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.