

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19783 of Beyond Light, Inc., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use requirements of Subtitle U § 420.1(a) to permit a community-based institutional facility in the RA-1 zone at premises 4212 Livingston Road, S.E. (Square 6119, Lot 15).

HEARING DATES: July 18, October 3, and October 17, 2018
DECISION DATE: October 17, 2018

DECISION AND ORDER

This application was submitted on May 1, 2018 by Tywania Fletcher-Langley on behalf of Beyond Light, Inc. (the “Applicant”). Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By letters and memoranda dated May 30, 2018, the Office of Zoning provided notice of the application and the public hearing to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 8 as well as the Chairman and the four at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 8D, the ANC in which the subject property is located, and Single Member District ANC 8D03. Pursuant to 11 DCMR Subtitle Y § 402.1, the Office of Zoning mailed letters providing notice of the hearing to the owners of all property within 200 feet of the subject property. Notice was published in the District of Columbia Register on June 1, 2018. (65 DCR 6016.)

Party Status. In accordance with Subtitle Y § 403.5, the Applicant and ANC 8D were automatically parties in this proceeding. There were no requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony in support of the application from Shana Latham, clinical director, and Tywania Fletcher-Langley, the executive director of the proposed community-based institutional facility.

OP Report. By memorandum dated July 6, 2018, the Office of Planning recommended approval of the application for as many as 10 clients, subject to four conditions intended “to minimize potential impacts of the proposal on the surrounding neighborhood.” (Exhibit 32.)

DDOT. By memorandum dated July 6, 2018, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 33.)

ANC Report. By report dated July 18, 2018, ANC 8D indicated that, at a public meeting on June 28, 2018, with a quorum present, the ANC adopted a resolution urging the Board to deny the application. The ANC also testified in opposition to the application at the public hearing, asserting that the proposed facility would have an adverse impact on nearby residences.

FINDINGS OF FACT

1. The subject property is located on the east side of Livingston Road, S.E. (Square 6119, Lot 15).
2. The subject property is a rectangular parcel approximately 22 feet wide and 125 feet deep.
3. The subject property is improved with a two-story semi-detached building formerly used as a principal dwelling. The lot lacks alley access and does not contain any parking spaces.
4. The Applicant proposed to operate a community-based institutional facility at the subject property for eight to 10 men, with seven employees. Staff would be available 24 hours per day but would not live on-site. No changes to the exterior of the existing building were proposed.
5. The Applicant described the planned use as a not-for-profit behavioral health program that would operate a 90-day work therapy program for men. The men would be employed and would attend meetings and counseling sessions, including some off-site. The program would not accept walk-ins but would get referrals from the Court Services and Offender Supervision Agency and the Department of Behavioral Health. The clients would not be permitted to “drive or access any vehicle” except for work-related purposes. Other rules would prohibit “hanging out in the neighborhood,” “loud music in the facility,” and the use of drugs or alcohol. (Exhibit 6.)
6. The subject property is located in an area characterized by low- to moderate-density residential uses. Semi-detached dwellings are located to the north and south; low-rise apartment buildings are located to the east. A large park is located across Livingston Street to the west of the subject property.
7. The subject property and properties in the vicinity are located in a Residential Apartment (RA) zone, RA-1. The RA zones permit urban residential development and compatible institutional and semi-public buildings. (Subtitle F § 100.1.) The RA zones are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F § 100.2.)
8. The provisions of the RA zones are intended to: (a) provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses; (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow

limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 100.3.)

9. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments. (Subtitle F § 300.2.) The purposes of the RA-1 zone are to: (a) permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 300.1.)

10. The Zoning Regulations describe a community-based institutional facility as a use providing court-ordered monitored care to individuals who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living, have been assigned to the facility, or are being detained by the government, other than as a condition of probation. Examples may include an adult rehabilitation home, a youth rehabilitation home, or detention or correctional facilities that do not fall within the large-scale government use category. The “community-based institutional facility” use category does not include uses that more typically would be categorized as an emergency shelter or a large-scale government use, or residential or medical care uses that were previously defined as community residence facilities, health care facilities, substance abuser’s homes, or youth residential care homes. (Subtitle B § 200.2(g).)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under the use requirements of Subtitle U § 420.1(a) to permit a community-based institutional facility in the RA-1 zone at 4212 Livingston Road S.E. (Square 6119, Lot 15). 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 § 420.1, certain uses, including a community-based institutional facility, may be permitted in the RA-1 zone if approved by the Board as a special exception under Subtitle X, Chapter 9, subject to the provisions applicable to each use.¹ In the case of a community-based

¹ Under Subtitle U § 420, the uses permitted by special exception in the RA zones include those uses permitted by special exception in Residential Flats (RF) zones under Subtitle U § 320, which in turn allows those uses permitted by special exception in specified Residence (R) zones under Subtitle U § 203. The uses permitted by special exception

institutional facility use, the provisions set forth in Subtitle U § 203.1(e) specify that the facility must house not more than 15 persons, not including resident supervisors or staff and their families. Approval of the requested special exception also requires a Board finding, in accordance with Subtitle X § 901.2, that the proposed community-based institutional facility use 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.

Based on the findings of fact, the Board concludes that the application does not meet the requirements for special exception approval of a community-based institutional facility use at the subject property. A community-based institutional facility could be in harmony with the general purpose and intent of the RA-1 zone as an institutional building that would be compatible with adjoining residential uses. However, the record in this case does not contain substantial evidence sufficient to support a conclusion that the proposed use would not tend to adversely affect the use of neighboring properties. Under the circumstances, approval of the application would run counter to one of the stated purposes of the RA zones, that is, to promote stable residential areas while permitting a variety of types of urban residential neighborhoods.

In this case, the application did not provide sufficient information about the management and operation of the proposed use, especially with respect to its daily procedures, how the residents would be supervised, traffic and parking impacts, and how the Applicant would address any potential objectionable conditions that might arise. Rather, the application relied on general descriptions of the prospective residents and their planned activities as well as conclusory statements about daily monitoring and security cameras, without sufficient specificity about the actual operation of the proposed use. During the public hearing, the Board repeatedly requested – but did not receive from the Applicant – information, for example, about the number of people expected on-site, including residents, staff, and visitors; the expected parking impacts generated by the facility’s employees; and methods of transportation anticipated for the residents’ trips to and from their places of employment and other off-site activities. The proposed community-based institutional facility would house as many as 10 men, each for a 90-day period, along with seven employees and an unknown number of visitors to the site, all in a semi-detached building on a lot without any off-street parking, located in close proximity to numerous other residential buildings. The Board is unable to find, based on the information in the record, that the proposed use would not tend to create adverse impacts on the use of neighboring properties.²

The Board does not agree with the recommendation of the OP report that the proposed use should be approved subject to conditions intended to mitigate potential adverse impacts. The OP report did not identify specific adverse impacts or state how the recommended conditions were reasonably necessary and sufficient to address those impacts. The conditions recommended by OP – no more than 10 clients housed on the property at any one time, and for more than 90 days;

in the R zones include community-based institutional facilities for up to 15 people, subject to certain requirements. *See* Subtitle U § 203.1(e).

² Pursuant to Subtitle X § 901.3, an applicant for a special exception has the full burden to prove no undue adverse impact and must “demonstrate such through evidence in the public record.” The applicant is not relieved of that responsibility even if no evidence is presented in opposition to the case.

clients must be monitored daily and not permitted to loiter within the neighborhood or play loud music; the facility must be monitored 24 hours per day, seven days per week; and clients would not be permitted to drive – were not sufficiently detailed to support a conclusion that the conditions would be readily enforceable and adequate to avoid the creation of adverse impacts by the proposed community-based institutional facility use.

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 does not agree with OP’s recommendation that the application should be approved, subject to conditions, 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.)) For the reasons discussed above, the Board concurs with the ANC’s view that the application should not be approved, as it would have an adverse impact on nearby residences.

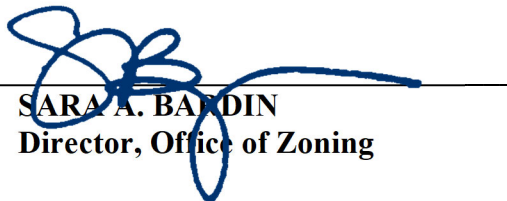
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for a special exception to allow a community-based institutional facility in the RA-1 district at 4212 Livingston Road, S.E. (Square 6119, Lot 15). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Anthony J. Hood voting to DENY.)

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. BANDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 1, 2020

PURSUANT TO 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.