

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19816 of InSite Real Estate Investment Properties LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use requirements of Subtitle U § 203.1(g), to permit a daytime care use in the R-12 Zone at premises 2461 Wisconsin Avenue N.W. (Square 1299, Lot 959).

HEARING DATE: September 12, 2018
DECISION DATE: September 12, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 6.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3B¹ and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3B, which is automatically a party to this application. The ANC submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on June 14, 2018, at which a quorum was present, the ANC voted 5-0-0 in support of the application. (Exhibit 13.) Commissioner Blumenthal appeared at the public hearing on behalf of ANC 3B. The single member district Commissioner for ANC 3C08, which is in the adjacent ANC, submitted a letter indicating that the Applicant presented the application to ANC 3C, but that the ANC did not take a vote. (Exhibit 31.)

¹ Notice was also sent to the adjacent ANC, ANC 3C.

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The Office of Planning (“OP”) submitted a timely report, recommending approval of the application subject to compliance with the District Department of Transportation’s (“DDOT”) conditions and the Office of the State Superintendent of Education’s (“OSSE”) review and approval. (Exhibit 39.)

DDOT submitted a timely report indicating that it had no objection to the grant of the application with conditions. (Exhibit 38.)

A letter of support for the application was submitted to the record from the Georgetown Heights Condominium Association. (Exhibit 32.)

A letter in opposition to the application was submitted to the record from Brandon Bortner, 67 Observatory Circle, N.W. (Exhibit 44.)

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under the use requirements of Subtitle U § 203.1(g), to permit a daytime care use in the R-12 Zone. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle U § 203.1(g), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 10 AND THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide signage in its off-street vehicle parking lot that indicates that the six (6) zoning compliant parking spaces shall be used for pick-up and drop-off only.
2. The Applicant shall offer all KinderCare full-time employees the option to participate in WMATA's SmartBenefits program or another program that allows employees to set aside up to \$260.00 pre-tax dollars for use on public transportation or vanpooling, as required by the DC Commuter Benefits Law.

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3. The Applicant shall offer all KinderCare full-time employees a transit benefit of no less than \$25.00 per paycheck.
4. The Applicant shall offer all KinderCare full-time employees a one-time free annual Capital Bikeshare membership at the time the daytime care facility opens.
5. The Applicant shall submit a carpooling plan to DDOT's TDM coordinator for review and approval. The plan shall include strategies to connect families based on geographic location.
6. Within one year of BZA approval of the application, the Applicant shall submit an annual performance monitoring report to DDOT's Planning and Sustainability Division ("PSD") with the following components:
 - a. Demonstrate adherence to a morning trip cap of 38 inbound vehicle trips by taking at least two (2) morning counts on a typical school day at least twice per year;
 - b. Provide the number of families carpooling to and from the Site;
 - c. Provide the number of employees who take advantage of the employer provided transit subsidy and no-cost Capital Bikeshare membership;
 - d. The total number of employees who take advantage of the no-cost Capital Bikeshare membership or transit subsidy should be no less than 14 full time employees, consistent with the mode-split applied in the Applicant's CTR;
 - e. If the Applicant can show compliance with the 38 inbound vehicle trip cap and 14 employee-non-auto mode-split requirement for a total two (2) consecutive years, performance monitoring shall no longer be required;
 - f. In the event the Applicant does not meet its requirements, it shall be required to coordinate with DDOT's Planning and Sustainability Division to increase the intensity of its TDM measures until its requirements are met for two (2) consecutive years; and
 - g. In the event the Applicant fails to submit its required reports, it will be assumed that the Applicant has not met its requirements, in which case it shall be required to coordinate with DDOT's PSD to increase the intensity of its TDM measures until its requirements are met for two (2) consecutive years.

VOTE: **5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter G. May to APPROVE.)

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 17, 2018

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 § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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 CONDITIONS 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.

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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.