

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**Application for 2909 North Capitol Street, NE
(Square 3500, Lot 37)**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted on behalf of Maria D. Naranjo (the “Applicant”), owner of the property located at 2909 North Capitol Street, NE, Washington, D.C. (Square 3500, Lot 37) (the “Property”) in support of her application, pursuant to 11-X DCMR § 901.2 and 11-U DCMR § 251.1(b)(3) for special exception approval to locate an expanded child development home for up to 12 children (the “Home”) at the Property. The Property is located in the R-3 Zone District.

Pursuant to 11-Y DCMR § 300.15 of the Zoning Regulations, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or the “Board”) no fewer than twenty one days prior to the public hearing for the application. In this statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested special exception. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

I. Site Description and Prior Zoning History

The Property is an approximately 1,488 square foot lot fronting North Capitol Street, NE, with public alley access located to the east of the Property. The Property is improved with a row house constructed in 1910. Currently, the Applicant operates an expanded child development home with no more than nine children, pursuant to Home Occupation Permit No. HO 1600277, a copy of which is attached as Exhibit A. An enclosed and screened outdoor play area is located in the back of the Property for use by the children.

The Applicant was previously granted approval by the Board in 2012 to operate an expanded child development home on the Property for twelve students with five staff (Order No. 18354). However, the Applicant never completed the permitting process to expand the child development home to 12 students, and the previous approval has lapsed. A copy of the Board’s previous order is attached as Exhibit B.

II. Special Exception Approval

The Applicant requests special exception approval, pursuant to 11-X DCMR § 901.2 and 11-U DCMR § 251.1(b)(3), to locate an expanded child development home for up to 12 students at the Property. Pursuant to D.C. Code §6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant a special exception where it finds the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested

relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

As is further discussed below, the proposed use is in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, since the Applicant is not changing the footprint or height of the existing building. Moreover, the Applicant is providing adequate facilities for pick-up and drop-off of the expanded child development home’s students.

Pursuant to 11-U DCMR § 251.1(b)(3), an expanded child development home for up to 12 students is permitted in the R-3 zone as a home occupation as a special exception under Subtitle X and subject to the provisions of 11-U DCMR § 251.6, provided a minimum of 35 square feet of floor area per individual is provided.¹ The Applicant is providing approximately 50 square feet of floor area per individual.

Subtitle U § 251.3 further requires that a home occupation shall comply with the following conditions and requirements. The Home is fully compliant.

(a) A home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes.

The expanded child development home will occupy approximately 25% of the existing residential building or 600 square feet. Thus, the home occupation is clearly secondary to the residential use.

(b) Except for lodging, and as provided in Subtitle U §§ 251.1(b) and 251.1(f), no more than the larger of two hundred fifty square feet (250 sq. ft.) or twenty-five percent (25%) of the floor area of the dwelling, excluding basement or any accessory structure, shall be utilized for the home occupation.

Pursuant to 11-U DCMR § 251.1(b)(3), an expanded child development home for up to 12 students is permitted provided a minimum of 35 square feet of floor area per individual is provided including the basement, but excluding any accessory structure. The Applicant is providing approximately 50 square feet of floor area per individual.

(c) All materials or finished products shall be stored within the floor area utilized for the home occupation or in a basement or accessory structure.

¹ The Applicant notes that the reference to § 251.6 that is found in § 251.1(b)(3) appears to be erroneous as § 251.6 specifically addresses conditions for home occupations that are not permitted or are prohibited, and thus by definition does not apply to expanded child care homes for up to 12 individuals, which are specifically permitted by special exception in § 251.1(b)(3).

The Applicant will store all materials for the home occupation use within the floor area utilized for the use.

(d) Except as provided in Subtitle U § 251.1(b), in no case shall more than two (2) persons who are not residents of the subject dwelling unit be permitted as employees of the home occupation except for the home office of a physician or dentist.

Subtitle U § 251.1(b) does not provide a limit on the number of persons who are not residents of the subject dwelling for an expanded child development home that has between 10 and 12 students. See 11-U DCMR § 251.1(b)(3).

(e) No interior structural alteration shall be permitted if it would make it difficult to return the premises to a use that is exclusively residential.

The Applicant is not proposing any interior structural alterations since the Property is already utilized as an expanded child development home for nine students.

(f) No operations related to the home occupation shall be conducted outside a structure, nor shall any storage or other unsightly condition be permitted outside a structure.

Other than the outdoor play area that currently exists in the backyard of the Property, the Applicant does not propose to locate any operations outside the existing structure. In addition, the Applicant is not proposing to store or cause any unsightly conditions outside of the existing building.

(g) No equipment or process shall be utilized that creates visual or audible electrical interference in television or radio receivers outside the subject home, or that causes fluctuations in line voltage outside the subject home.

No equipment or processes are proposed that will create visual or audible electrical interference in television or radio receivers outside the existing building, or that cause fluctuations in line voltage outside the existing building.

(h) The use shall produce no noxious odors, vibrations, glare, or fumes that are detectable to normal sensory perception outside the subject home.

The existing expanded child development home does not produce any noxious odors, vibrations, glare, or fumes that are detectable to normal sensory perception outside the existing building. The Applicant does not anticipate any changes to the current operations.

(i) The use shall not produce a level of noise that exceeds the level normally associated with the category of dwelling or the immediate neighborhood.

The existing expanded child development home does not produce a level of noise that exceeds the level normally associated with the category of dwelling or the immediate neighborhood. The Applicant does not anticipate any changes to the current operations.

(j) No more than two (2) vehicles may be used in the practice of the home occupation.

No more than two vehicles are proposed for use by the Home. The Applicant can provide a single complying parking space at the rear of the Property by reducing the size of the enclosed play area as shown on the attached Exhibit C.

(k) Except for child development homes and expanded child development homes, vehicular trips to the premises by visitors, customers, and delivery persons shall not exceed eight (8) trips daily on a regular and continuing basis.

This section is not applicable to an expanded child development home. However, the Home's students and staff will be drawn primarily from the immediate neighborhood surrounding the Property, as is currently the case. In addition to parents who will walk their children to and from the Home, the Property is conveniently located near five public bus routes, which can be used by parents, children and employees of the Home. Finally, the Property is located near the intersection of North Capitol Street, N.E. and Girard Street, N.E., and on-street public parking can be safely used by parents or guardians when dropping off and picking up children from the Home without disruption to the flow of traffic in front of or near the Property.

(l) Except for child development homes and expanded child development homes, the practitioner shall have no more than eight (8) clients or customers on the premises in any one (1) hour period.

This section is not applicable to an expanded child development home.

(m) If more than one (1) home occupation is practiced in a dwelling unit, the cumulative impact of all such home occupations shall not exceed any of the standards set forth in this chapter.

Only one home occupation is proposed.

(n) The dwelling unit owner and the practitioner shall maintain the residential character and appearance of the dwelling unit and lot.

The Applicant currently operates a home occupation at the Property. As shown on the existing condition photographs included with this application, the Applicant has maintained the residential character and appearance of the dwelling unit and lot. No exterior changes are proposed to the existing building.

Based on the foregoing, the Applicant's request is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception approval under 11-X DCMR § 901.2 and 11-U DCMR § 251.1(b)(3).

III. Affected Advisory Neighborhood Commission

As required under Subtitle Y § 300.8(1), the Applicant has apprised Advisory Neighborhood Commission ("ANC") 5E of the BZA application. The Applicant will continue to coordinate with ANC 5E and the Office of Planning, and other interested stakeholders between the time of filing the subject application and the public hearing.