

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18354 of Maria Naranjo, pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (12 children and five staff) under § 205, in the R-3 District at premises 2909 North Capitol Street, N.E. (Square 3500, Lot 37).

HEARING DATE: May 22, 2012
DECISION DATE: May 22, 2012 (Bench Decision)

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated August 17, 2011, from the Zoning Administrator (“ZA”) stating that the Applicant’s application for a home occupancy permit to use the subject premises for a “Child development home for twelve (12) children” was disapproved due to the need for Board of Zoning Adjustment (“Board” or “BZA”) approval.¹ (Exhibit 6.)

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”) 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. ANC 5C submitted a written report on May 21, 2012, which indicated that at a properly noticed, regularly scheduled public meeting held on December 6, 2011, with a quorum of Commissioners present, the ANC voted 12:0:0 to support the application.² (Exhibit 32.)

¹ In the memorandum, the ZA stated that the Applicant would be required to obtain a variance from the requirements of § 201.1 to establish the requested use in the R-3 Zone District. The Applicant did file a BZA application, as the ZA said was required, but not for the variance relief the ZA stated was needed. Instead, the Applicant asked for a special exception under § 205. At the hearing the Board waived the self-certification requirement and accepted the ZA’s memorandum, and in doing so, noted that it disagreed with the ZA insofar as the relief that was needed.

² The Board waived the timeliness requirement for the ANC report, accepted it into the record, and accorded it great weight.

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BOARD OF ZONING ADJUSTMENT
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The Office of Planning (“OP”) submitted a timely report recommending approval of the application, subject to six conditions.³ (Exhibit 30.) By its letter, dated February 16, 2012, the Office of State Superintendent of Education recommended that the application be approved. (Exhibits 20 and 25.) The District Department of Transportation (“DDOT”) submitted a letter dated April 26, 2012, indicating that there is no adverse impact to the transportation system due to the application and that DDOT has no objection to approval of the application. (Exhibit 28.)

Letters of support were submitted for the record from owners of neighboring property, Perry Lee Jones, 2911 North Capitol Street, N.E., and James T. Terburg, 2907 North Capitol Street, N.E. (Exhibit 29, Tab C.) Also, letters of support of the application were submitted to the record from current participants at the Applicant’s current child development home. (Exhibit 29, Tab D.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under § 205. 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 §§ 3104.1 and 205 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 § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, 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 be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of FIVE YEARS, beginning on the date upon which the order became final.
2. Enrollment shall not exceed 12 children, age 15 years or less.
3. The center shall have a maximum of FIVE staff.
4. The days and hours of operation are Monday through Friday from 7:00 a.m. to 6:00 p.m.:

³ The Board imposed the conditions OP recommended for this application, including setting a term of five years. (Exhibit 30.)

- a. Drop-off hours are between 7:00 a.m. to 9:00 a.m.; and
 - b. Pick-up hours are from 3:00 p.m. to 6:00 p.m.
5. One parking space shall be reserved on-site for use by center staff.
6. Center trash collection shall be scheduled at least once a week.

VOTE: 5-0-0 (Lloyd J. Jordan, Anthony J. Hood, Nicole C. Sorg, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle 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: JUN 0 1 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, 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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, 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.

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.