

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



Application No. 20941 of Chukwuma Ewelike, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle U § 203.1(j) and Subtitle C § 703.2 from the minimum vehicle parking requirements of Subtitle C § 701.5 to allow a health care facility use, without vehicle parking, at an existing two-story detached building in the R-2 Zone at 721 48th Street, N.E. (Square 5148, Lot 800).

HEARING DATE: September 20, 2023

DECISION DATE: September 20, 2023

DECISION AND ORDER

This self-certified application was filed on April 26, 2023 on behalf of Chukwuma Ewelike (“Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing, by letters dated May 5, 2023, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 7C, the ANC in which the subject property is located, the Single Member District ANC 7C01, the Department of Buildings, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 7 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property.¹

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 7C were automatically parties in this proceeding. The Board received no requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony in support of the application for zoning relief needed to allow a health care facility use without vehicle parking at the subject property.

¹ The Office of Zoning also sent notice of the application and public hearing for publication in the *District of Columbia Register* on May 5, 2023. However, the notice was inadvertently not published. The Board concluded that the nature and extent of actual notice from all other sources, including notice to ANC 7C, evidence that the notice posted at the subject property was properly maintained, and notice mailed to owners of nearby properties, was sufficient. See Subtitle Y § 402.11.

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OP Report. By report dated September 7, 2023, the Office of Planning recommended approval of the application. (Exhibit 36.)

DDOT. By report dated May 6, 2022, the District Department of Transportation indicated no objection to approval of the application with conditions relating to removal of a fence and paving previously installed, without necessary permits, in the building restriction line area at the subject property. (Exhibit 37.)

ANC 7C. By letter dated September 19, 2023, ANC 7C indicated that, at its regularly scheduled and noticed meeting on September 14, 2023, with a quorum present, the ANC voted to oppose the application citing concerns about parking. (Exhibit 41.)

Persons in Support. The Board received letters from persons in support of the application who indicated no objection to the Applicant's proposal.

FINDINGS OF FACT

1. The property that is the subject of this application is a corner lot at the southeast corner of the intersection of 48th and Hayes Streets N.E., one block north of Nannie Helen Burroughs Avenue, with the address of 721 48th Street, N.E. (Square 5148, Lot 800).
2. The subject property is a trapezoid-shaped lot with 43.5 feet of street frontage along 48th Street and 100 feet of frontage along Hayes Street. The lot area is 3,775 square feet.
3. The subject property is improved with a detached building that is 20 feet and two stories in height. The existing building has side yards of five and six feet as well as a rear yard of eight feet. The lot occupancy is 50 percent.
4. The Applicant purchased the subject property in 2019 to use the existing building for religious services with an accessory administrative health office.² Since 2021, religious services have been held six days per week.
5. The Applicant now proposed to use the subject property as a health care facility with an accessory religious use. No enlargement of the building was planned.
6. The Applicant proposed a health care facility use for up to ten people at the subject property. As planned, the health care facility use will be operated by a licensed home care agency that specializes in treating special needs patients, including pediatrics, by providing skilled nursing services in patients' homes.

²The Applicant obtained a certificate of occupancy (No. CO2102369) to allow a religious use with an accessory administrative health office at the subject property. In November 2022, the Department of Buildings issued a notice of revocation of the certificate of occupancy on the grounds that the use of the subject property did not qualify as a religious use or an accessory office. The Applicant filed an appeal of that determination with the Board (see Appeal No. 20889 (Appeal of Chukwuma Ewelike; filed January 17, 2023)).

7. The existing building at the subject property will be used as administrative office space for human resources and billing functions and for a telephone receptionist. The health care facility use will not encompass any medical treatment or patient visits at the subject property.
8. The Applicant anticipated that approximately 10 employees of the health care facility will be at the subject property during regular business hours of Monday to Friday from 9 AM to 5:30 PM. In addition, medical professionals will intermittently travel to the site; for example, to retrieve equipment or for administrative reasons.
9. The subject property is located within a quarter-mile of a Metrobus Priority Corridor Network Route (X9) and within walking distance of other Metrobus routes along Nannie Helen Burroughs Avenue, N.E.
10. The subject property is located within three-quarters of a mile of two Metrorail stations (Minnesota Avenue and Deanwood).
11. The subject property is located within two blocks of a Capital Bikeshare station at the corner of Nannie Helen Burroughs Avenue and 49th Street N.E.
12. The subject property does not have access to any public alley nor an existing curb cut.
13. The property to the south of the subject property contains a detached principal dwelling that is separated from the Applicant's building by a side yard and driveway. The abutting property to the east is triangular and unimproved.
14. Other properties in the vicinity to the north and west of the subject property primarily contain detached dwellings. Properties to the south, along Nannie Helen Burroughs Avenue N.E., are located in a Mixed Use zone (MU-3A) and contain a mix of low- to medium-density residential developments and low-density commercial uses.
15. The subject property is located in a Residential House (R) zone, R-2. The R zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.) 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 lot width for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)

16. The purposes of the R-2 zone are to (a) provide for areas with semi-detached houses; and (b) protect these areas from invasion by denser types of residential development. (Subtitle D § 101.6.) The R-2 is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached houses. (Subtitle D § 101.7.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions under Subtitle U § 203.1(j) and Subtitle C § 703.2, from the minimum vehicle parking requirements of Subtitle C § 701.5, to allow a health care facility use, without any parking spaces, in an existing two-story detached building in the R-2 zone at 721 48th Street, N.E. (Square 5148, Lot 800). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant a special exception, 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.).

Health Care Facility Use. Pursuant to Subtitle U § 203.1, certain uses may be permitted as a special exception in R-Use Group B if approved by the Board under Subtitle X, Chapter 9 subject to applicable conditions of each section.³ In the case of a health care facility use for nine to 300 persons, not including resident supervisors or staff and their families, the requirements include that (a) no other property containing a health care facility may be located either in the same square or within a radius of 500 feet from any portion of the Applicant's property; (b) the facility must provide adequate, appropriately located, and screened off-street parking 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. (Subtitle U § 203.1(j).)

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 7C, the Board concludes that the Applicant has met the requirements for approval of a special exception consistent with Subtitle U § 203.1(j). The Board credits the testimony of the Applicant and the Office of Planning in concluding that no other property containing a health care facility is located either in Square 5148 or within a radius of 500 feet from any portion of the Applicant's property. For the reasons discussed below, the Board concludes that the absence of vehicle parking at the subject property will not create objectionable conditions, especially considering that the Applicant's health care facility use will not entail a large number of visitors to the site and that the number of employees at the site will be limited to 10. To operate the health care facility, the Applicant has selected a home care agency that is licensed by the D.C. Department of Health to operate at the subject property (see Exhibit 8 at Tab B).

³ The R-2 district is included in R-Use Group B. *See* Subtitle U § 200.2.

The Board concludes that the Applicant's health care facility use will not have an adverse impact on the surrounding neighborhood because of traffic, noise, or operations. The traffic generated by the planned facility will be limited by the relatively small staff at the site as well as the absence of patient visits to the facility. The Board credits DDOT's conclusion that impacts on the transportation network "are expected to be minimal" for reasons including "the site's proximity to transit [and] the walkability of the neighborhood." (Exhibit 37.) The operation of the health care facility at the subject property will consist primarily of office functions that will occur inside the existing building, thereby minimizing potential impacts related to noise or operations.

Parking. The Applicant requested a special exception under Subtitle C § 703.2 from the minimum vehicle parking requirements of Subtitle C § 701.5 because the Zoning Regulations require one vehicle parking space for a health care facility use at the subject property and the Applicant proposed not to provide any vehicle parking, citing the lack of a curb cut or alley access as well as the lack of a suitable parking area at the site.

The Zoning Regulations provide flexibility from the parking requirement when the provision of the required number of spaces would be impractical or unnecessary due to the shape or configuration of the site, a lack of demand for parking, or proximity to transit. (Subtitle C § 703.1.) In accordance with Subtitle C § 703.2, the Board may grant a full reduction in the number of required parking spaces if approved under Subtitle X, Chapter 9, and subject to the applicant's demonstration to the Board's satisfaction of at least one of the specified requirements.

The Board credits the Applicant's testimony that the required parking spaces cannot be provided either on the lot or within 600 feet of the lot (Subtitle C § 703.2(a)) and that the health care facility use will be well served by mass transit, shared vehicle, and bicycle facilities (Subtitle C § 703.2(b)). The side and rear yards created by the existing building are insufficient for use as vehicle parking spaces, and the Applicant was unable to locate any available parking spaces within 600 feet of the subject property. The health care facility will be located in an area served by public transit, both bus and rail, and will be accessible by other options including ride sharing and bicycling. The Board also notes that the planned health care facility use is not expected to create a significant amount of traffic congestion, in an area that does not presently experience a high degree of traffic congestion, because the use of the subject property will generally be limited to the facility's staff, without patient visits to the site. The subject property does not have access to a public alley or a curb cut, and DDOT noted that approval of a curb cut to provide access to a parking space on-site would eliminate a parking space on the street.

The Board notes the concern about parking stated by ANC 7C, which opposed the application because the Applicant had not "provide[d] alternative parking solutions that would address the concerns of the Deanwood Community and ANC7C...." However, the Board did not find the ANC's concern persuasive due to the limited nature of the relief requested (from the requirement to provide one vehicle parking space) and because the application satisfied the criteria for approval of a reduction in the number of vehicle parking spaces. The Board notes that the Applicant indicated an intent to lease nearby parking spaces in response to the ANC's concern about parking. The Applicant testified about efforts to contact the owner of the abutting property for use of a

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driveway as well as negotiations undertaken with two churches within 1,000 square feet of the subject property, although the Applicant had not yet been able to lease any nearby vehicle parking spaces.

Subtitle X § 901.2. The Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as is required for approval of the application under Subtitle X § 901.2. Approval of the application will be consistent with the purposes of the Residential House zones to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses, and to allow for limited compatible non-residential uses. Approval of the zoning relief requested will also be consistent with the purposes of the R-2 zone to avoid higher-density types of residential development.

Based on the findings of fact and for the reasons discussed above, the Board concludes that approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The planned health care facility use will be operated inside an existing building, with a staff limited to 10 employees, so as to avoid the creation of adverse impacts on neighboring properties.

Great weight. 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 agrees with OP’s recommendation that, in this case, the application should be approved.

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 7C voted to oppose the application due to concerns about vehicle parking. For the reasons discussed above, the Board did not find the ANC’s lack of support a persuasive reason to deny the requested zoning relief because the ANC did not contend that the application failed to meet the requirements stated in the Zoning Regulations for approval but stated a general, unsubstantiated concern about parking in the community.

Based on the findings of fact and the conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under Subtitle U § 203.1(j) and under Subtitle C § 703.2 from the minimum vehicle parking requirements to allow a health care facility use, not providing vehicle parking spaces, in an existing two-story detached building in the R-2 zone at 721 48th Street, N.E. (Square 5148, Lot 800). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 6 in the record, subject to the following **CONDITION**:


1. The Applicant shall limit the number of employees on site to 10.

VOTE: 3-0-2 (Frederick L. Hill, Chrishaun S. Smith, and Anthony J. Hood to APPROVE; Lorna L. John not present or participating; one Board seat vacant)

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: October 22, 2024

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 UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS 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 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 CONDITION 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.