

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

AUGUST 3, 2010

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Nicole Sorg, Acting Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

NICOLE SORG, Acting Chairperson
SHANE L. DETTMAN, Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY G. HOOD, Zoning Commission
Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Meeting held on August 3, 2010.

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1 P-R-O-C-E-E-D-I-N-G-S

2 10:39 a.m.

3 ACTING CHAIRPERSON SORG: This
4 meeting will please come to order. Before we
5 begin today, I wanted to thank everyone for
6 their patience this morning. Unfortunately,
7 we had an unavoidable delay. So, thank you
8 for coming and we will conduct the hearings as
9 efficiency as possible.

10 Good morning, ladies and gentleman.

11 This is the August 3rd, 2010 Public Meeting
12 of the Board of Zoning Adjustment of the
13 District of Columbia.

14 My name is Nicole Sorg, Vice
15 Chairperson. Joining me today is Shane
16 Dettman representing the National Capital
17 Planning Commission and representing the
18 Zoning Commission, Anthony Hood.

19 Copies of today's meeting agenda
20 are available to you and are located to my
21 left in the wall bin near the door.

22 We do not take any public testimony

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1 at our meetings unless the Board asks someone
2 to come forward.

3 Please be advised that this
4 proceeding is being recorded by a court
5 reporter and is also webcast live.
6 Accordingly, we must ask you to refrain from
7 any disruptive noises or actions in the
8 hearing room. Please turn off all beepers and
9 cell phone.

10 Mr. Secretary, are there any
11 preliminary matters?

12 MR. MOY: Yes, there is, Madam
13 Chair, but it's early in the public meeting
14 session. We only have one case for a
15 decision. We can do that when I call the
16 case.

17 ACTING CHAIRPERSON SORG: Okay. If
18 there's only one case this morning, let's call
19 the case and address the preliminary matters.

20 MR. MOY: Yes, good morning, Madam
21 Chair, Members of the Board.

22 Today for the Special Public

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1 Meeting is a decision action on the Board on
2 Application Number 18074 of Shirley H. Cox
3 pursuant to 11 DCMR 3104.1 for a special
4 exception to establish a child development
5 center. The application was amended for 15
6 children and three staff under Section 205 in
7 the R-2 District at premises 3008 K Street,
8 S.E. The property is in Square 5482, Lot 8.

9 As the Board will recall on July
10 13th, 2010, the Board convened the public
11 decision meeting session and deliberated. The
12 Board made a decision to reschedule its
13 decision to July 27th, 2010 and, of course, in
14 turn, that was later rescheduled to August
15 3rd.

16 The Applicant was required to serve
17 all parties her filing which was her filing
18 identified as Exhibit 30 dated July 7th, 2010
19 by July 16th, 2010. Parties were allowed to
20 respond to her filing by Friday, July 23rd,
21 2010.

22 Madam Chair, there are four filings

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1 in the record. The first filing is from the
2 Applicant dated July 14th and July 28th
3 Exhibit 32 and Exhibit 34 respectively in your
4 case folders.

5 Second, there is a response filing
6 from the Party Opposition Deborah Lake-Hinkle
7 identified in your case folders as Exhibit 33.

8 The Board is also in receive of
9 three additional filings. Preliminary matters
10 relate to timeliness and whether or not their
11 document was allowed into the record.

12 The first is from the Party
13 Opposition which was in preparation for the
14 Board's decision meeting on July 13th. That
15 filing is Exhibit 31.

16 There's also a filing identified as
17 Exhibit 35 from the Applicant dated Monday,
18 August 2nd which presumably is a response to
19 the Party Opposition's filing of Exhibit
20 Number 33.

21 And lastly, yesterday, a filing
22 again from the Applicant, Exhibit Number 36,

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1 which is her notice of service.

2 The Board is to act on the merits
3 of the special exception relief to establish a
4 child development center for 15 children and
5 three staff under Section 205.

6 That completes the staff's
7 briefing, Madam Chair.

8 ACTING CHAIRPERSON SORG: Thank
9 you, Mr. Secretary.

10 Before we go into discussing the
11 findings in question and their timeliness, I
12 want to note that -- for the record that Mr.
13 Hood is not participating on this decision
14 case today.

15 Mr. May has filed an absentee
16 ballot.

17 So, with that said, let's take the
18 findings in three separate groups. The first
19 the Applicant's letters documenting that she
20 served the Opposition Party with her post-
21 hearing statement. That's our Exhibit Number
22 32 and 34. Thirty-two was received timely and

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1 it is the Board's understanding that Exhibit
2 34, which is the filing in question here that
3 was received after the deadline of July 16th,
4 on July 28th. I think we can accept this
5 filing for good cause based on our instruction
6 in the last hearing. So, we will accept into
7 the record Exhibit Number 34 and waive our
8 rules under 3100.5.

9 The second group here in question
10 is the letter from the Opposition Party Ms.
11 Lake-Hinkle which is our Exhibit Number 31
12 which was filed after the filing deadline of,
13 pardon me, July 12th on the date of the
14 hearing of July 13th. This submission, I
15 believe, the Board is also going to waive our
16 rules and allow into the record.

17 We did at that time in that hearing
18 ask for certain other documentation related to
19 the subject of this letter and this was
20 received prior to both of the subsequent
21 deadlines of July 16th and July 23rd.

22 With regard to the two latest

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1 submissions received from the Applicant,
2 Exhibits Number 35 and 36, that were received
3 well beyond the deadline for submission for
4 the Applicant of July 16th as well as beyond
5 the deadline of July 23rd for responses to her
6 statement, we are not going to allow these two
7 exhibits into the file.

8 With those matters discussed, I
9 believe we can go into our deliberations and
10 for that, I will turn to Mr. Dettman.

11 MEMBER DETTMAN: Thank you, Ms.
12 Sorg.

13 As Mr. Moy stated, this is a
14 request for a special exception to establish a
15 child development center pursuant to Section
16 205 of the Zoning Regulations as well as the
17 general special exception criteria at Section
18 3104.

19 The request is for -- although
20 originally advertised for 18 children, what
21 we're actually looking at here is a request
22 for 15 children and three staff at 3008 K

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1 Street, S.E.

2 I think I can be relatively brief
3 here in relying heavily upon the Office of
4 Planning's report.

5 Just to start out, I am in support
6 of the application. I think the Applicant has
7 successfully taken care of her due diligence
8 in providing us with the information that we
9 need to render a decision.

10 Very quickly, Section 205.2 states
11 that the proposed child development center
12 must be capable of meeting all applicable code
13 and licensing requirements. We have in our
14 record our Exhibit Number 29, a letter from
15 Ms. Valerie Ware of the D.C. Office of the
16 State Superintendent of Education, indicating
17 its support for the application and also
18 indicating that the licensure capacity would
19 be calculated based on the issued C of O at
20 the time OSSE gets this application and
21 conducts its formal review of the application
22 and so, that letter indicates that they are

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1 capable of meeting the licensing capacity per
2 Title 29 of the DCMR.

3 Furthermore, Section 205 indicates
4 that it shall be located and designed to
5 create no objectional traffic conditions and
6 no unsafe conditions for the pick up and drop
7 off of persons in attendance. I think that,
8 given the relatively small size of the child
9 development center with three staff, the
10 parking requirement for three staff would be
11 one parking space and the Applicant has been
12 able to successfully identify a way to provide
13 that one parking space onsite to the rear of
14 the property. Has indicated that the existing
15 fence has been modified in order to allow for
16 the ingress and egress of that one vehicle
17 into the back parking space.

18 Since this is a -- we're only
19 looking for 15 children, the hours of
20 operation are requested to be 6:30 to 6:30 and
21 during the hearing, the Applicant testified to
22 that not all 15 children will be showing up at

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1 one time in the morning and leaving at one
2 time in the evening. It'll be spaced out over
3 time dependent upon the hours that the parents
4 work and so, it's like that you might have
5 five children show up in the morning. Maybe
6 two of them leave mid-afternoon. A couple
7 more show up and so, since this would be
8 spaced out over time and that it's likely that
9 some of the children may reside in relative
10 close proximity to be walking to the child
11 development center.

12 I think that as proposed I don't
13 think that the facility would create any
14 objectionable traffic conditions with respect
15 to pick up and drop off, with respect to on-
16 street parking. It appears that there is
17 enough on-street parking in close proximity to
18 accommodate any vehicle that would be showing
19 up to this facility.

20 Section 205.5 talks about the
21 outdoor play space provided and it should be
22 located and designed so that there's no

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1 objectional impacts on the adjacent nearby
2 properties. Again, it's a relatively small
3 operation. There were some concerns expressed
4 by the Party Opposition, the K Street
5 Committee, related to the neighboring property
6 and I believe that was a Mr. Lake, about noise
7 issues related to the play area.

8 The Applicant in response to that
9 has constructed a bamboo noise buffer along
10 that common property line and although the
11 Party Opponent indicates that this is a fairly
12 flimsy fence, it's not anchored to the ground,
13 it could be blown down at any other time, I
14 think that through the appropriate conditions
15 we can make sure the a noise buffer is
16 maintained at all time along that common
17 property line.

18 Section 205 goes on to talk about
19 that the Board may require special treatment
20 by way of design or screening, planting and
21 parking areas and whatnot. I think that we
22 can address that and some conditions.

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1 The use of any offsite play area,
2 that's not applicable to this case.

3 And that the Board may approve more
4 than one child development center within a
5 thousand feet. I think it was testified to by
6 the Applicant as well as the Party Opponent
7 that there is one other CDC in relative close
8 proximity, but I don't see a real potential
9 for cumulative affects of those two facilities
10 on the neighborhood.

11 So, with that, Madam Chair, again,
12 I think that the Applicant has met its burden
13 under 205 and that I'm inclined to support the
14 application with the appropriate conditions.

15 ACTING CHAIRPERSON SORG: Thank
16 you, Mr. Dettman. I agree with your comments
17 completely. I'm also inclined to support the
18 application.

19 In addition to the things that you
20 mentioned, would also like to note that in the
21 OP report we have an indication that DDOT
22 while not submitting a report did not express

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1 any concerns about the proposal either.

2 With that said, is there a motion?

3 MEMBER DETTMAN: Sure. Before
4 moving onto a motion, I will also note that
5 though we don't have a report from the ANC to
6 which we can give great weight, we do have a
7 letter from the SMD indicating that he is in
8 support of the application.

9 And just to quickly, if I may,
10 discuss potential conditions that we can
11 incorporate into the motion and these
12 conditions other than what we typically see
13 for new child development centers in the way
14 of number of students and staff and hours of
15 operation. There are a couple extra
16 conditions that I think could be appropriate
17 based on some of the concerns that were raised
18 by the Party Opponent as well as the Dupont
19 Park Civic Association in the letter that we
20 received from them, our Exhibit 21.

21 And it goes to traffic and parking
22 which I don't see a need for concern there,

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1 but it also goes to what's stated as the
2 commercialization of the neighborhood. Excess
3 litter, day care signage, the look of the
4 neighborhood.

5 And so, with that, I think that
6 again, in addition to an appropriate term
7 which I could support the three-year term
8 which would allow the Board to take a --
9 reevaluate this application in three years,
10 hours of operation would be 6:30 to 6:30.
11 Number of staff would be three. Number of
12 students would be 15.

13 I think that we could have a
14 condition that requires the constant
15 maintenance of the screen buffer along that
16 common property line. I think that would be
17 the -- along the entire length of the east
18 property line, require that no signage be
19 constructed either on the property or on the
20 actual building and then finally, something to
21 the affect that the property shall be
22 maintained in a clean and orderly condition

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1 including the regular upkeep of landscaping,
2 removal of trash and the proper storage of
3 play area equipment when the child development
4 center is not in operation, outside of
5 business hours.

6 ACTING CHAIRPERSON SORG: Thank
7 you, Mr. Dettman, for incorporating those
8 other points and documents into the comments
9 and I also agree with the conditions that
10 you've set forward with regard to the term as
11 well as those other conditions that take into
12 account some of the concerns that we've heard
13 from the community.

14 And as you've discussed before, you
15 know, this is a business use that's coming
16 into a very tightknit community which we've
17 seen from the proceedings has great interest
18 in maintaining the residential character of
19 their community and I think that with these
20 conditions we can help to insure that, you
21 know, this new business operates closely in
22 conjunction and collaboratively with the

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1 neighborhood.

2 MEMBER DETTMAN: I agree, Ms. Sorg,
3 and I think the term can be effective here.

4 I think, you know, we typically do
5 that for new child development centers in
6 coming into residential areas which
7 essentially gives the community, you know,
8 three years to monitor the use, collect any
9 information in terms of adverse impacts that
10 it may or may not have over the course of
11 three years and then, you know, come either in
12 support or reiterate their opposition in three
13 years and allow the Board to take another look
14 at the operation.

15 Are we ready for a motion?

16 ACTING CHAIRPERSON SORG: Yes,
17 please.

18 MEMBER DETTMAN: Sure. I'll move
19 for approval of Application Number 18074
20 pursuant to 11 DCMR 3104.1 for a special
21 exception to establish a child development
22 center for 15 children and three staff under

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1 Section 205 located at 3008 K Street, S.E. as
2 conditioned.

3 ACTING CHAIRPERSON SORG: And I'll
4 second that motion. A motion has been made
5 and seconded. All those in favor say aye.

6 (Ayes.)

7 ACTING CHAIRPERSON SORG: Opposed?
8 Mr. Moy, can you please read back the vote?

9 MR. MOY: Yes, Madam Chair. Before
10 I do that though, I would like to make for the
11 record that as you indicated earlier that we
12 do have an absentee ballot from another
13 participant on the application Mr. Peter May
14 and his absentee vote is to approve the
15 application with such conditions as the Board
16 may impose.

17 So, with that vote, that we give a
18 final vote of 3 to 0 to 2 on the motion of Mr.
19 Dettman to approve the application with the
20 conditions as he stated in his motion.
21 Seconded by Ms. Sorg. Of course, in support
22 of the motion, Mr. Peter May. Again, the

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1 final vote is 3 to 0 to 2.

2 ACTING CHAIRPERSON SORG: Thank
3 you, Mr. Moy.

4 Are there any other matters for the
5 morning session of the public meeting?

6 MR. MOY: No, Madam Chair, that
7 should complete the Special Public Meeting.

8 ACTING CHAIRPERSON SORG: Okay.
9 Thank this concludes the public meeting of the
10 Board of Zoning Adjustment for August 3rd and
11 we'll move into our morning Public Hearing
12 session.

13 (Whereupon, the meeting was
14 concluded at 10:58 a.m.)

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