

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13123 of Viola Holston, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.41 and a variance from the parking requirements (Sub-section 7202.1) to use the basement of the subject premises as a pre-school consisting of eleven children and two teachers in an R-2 District at the premises 728 Delafield Street, N.E., (Square 3788, Lot 54).

HEARING DATE: December 19, 1980

DECISION DATE: January 9, 1980

FINDINGS OF FACT:

1. The subject property is located on the north side of Delafield Street between 7th and 8th Streets, N.E., and is known as 728 Delafield Street, N.E. It is in an R-2 District.
2. The subject site is seventy three feet deep by 24.50 feet wide and is improved with a single family semi-detached dwelling with a basement. An addition has been added to the basement on top of which is a patio.
3. The subject premises is the home of the applicant. The applicant has been operating a day care center at her premises since 1960. No Certificate of Occupancy has ever been issued for the day care center. The applicant testified that she was licensed.
4. At present eleven children are in attendance at the subject premises. Their ages are three years to five years. Five of the children constitute the day care center. Six of the children attend for reading classes. All eleven children arrive at the school between 9:00 a.m. and 9:30 a.m. The five children remain on the premises until 4:00 p.m. The six readers leave the premises between 12 and 12:30 p.m. Only one of the eleven students is from the immediate neighborhood. The applicant is compensated for the five children. She receives no compensation for the six readers. The applicant and her son constitute the only teachers. There is no other staff.

5. The basement and its addition serve primarily as the facility for the children. The basement is approximately twelve feet by fifteen feet. The addition is nine feet by twelve feet. There is one bathroom on the basement. Chairs and tables are provided for the children. The five children bring their own lunch. They eat and nap in the basement. The readers neither eat nor nap at the facility. On occasions the patio, the living room, Park and the alley to the rear of the subject property serve as the play area for the children.

6. There is no on-site parking provided on the subject premises. All eleven children are dropped off and picked up by their parents. There is no bus service provided by the center. Under the Zoning Regulations the applicant should provide one on-site parking space. The applicant seek a variance from this requirement.

7. The applicant now proposes to continue the use of the basement as a pre-school for the eleven children and the two teachers.

8. There was much opposition to the application on the part of neighboring residents. A petition with seventy-eight signatures in opposition was submitted to the record. The grounds for the opposition were as follows:

- a. The subject neighborhood is a residential neighborhood and the existing school has an adverse impact on its character due to increased traffic problems and noise from the children.
- b. The existing school is illegally constituted and its perpetuation, if legally constituted with Board approval, would not lessen its adverse affect on the neighborhood. The neighbors had not protested before because they thought the school was legally constituted.
- c. The school does not serve the immediate neighborhood.
- d. The parents of the children have increased traffic problems by their double parking when bringing the children to school and picking them up.
- e. The play hours of the school interrupt the peace and quiet of the immediate neighborhood.
- f. The present activity and the proposed activity is a commercial interprise and is not fitting for a residential neighborhood.
- g. The residents do not wish a zoning change in their neighborhood. Basically, the opposition agreed that quality education was not the issue.

9. There were also many letters in favor of the application. They were addressed to the issue of the quality of the education provided by the school.

10. Advisory Neighborhood Commission 5A opposed the application on the following grounds:

- a. Increase in motor traffic.
- b. The premises does not have the off-street parking required by law.
- c. Additional noise.
- d. Observations indicate that the pre-school does not serve the immediate community. Many of the children are transported from nearby communities including Maryland.
- e. It is the opinion that the permission granted by the Board of Zoning Adjustment under Application No. 13031 (1979) sufficiently serve the educational needs of the community. The Holston premises is only three blocks from the newly proposed school.

The citizens are concerned that the granting of the application will distort the residential area.

11. At the Public Hearing the Board addressed some of the concerns of the neighborhood residents so that the record would be clear. The application, if approved, would not involve any change in zoning. The applicant is requesting a special exception and a variance not a rezoning of a particular site or a neighborhood. Secondly, the proposed facility does not constitute a commercial enterprise in any sense whatever. The neighbors should have no fear of a commercial enterprise in a residential neighborhood. Thirdly, the children who are attending the subject residence as readers constituted visitors and this practice could continue.

12. As to the other issues raised in opposition, including those cited by the ANC, the Board finds that the use is not reasonably necessary to the neighborhood, that the enrollment of the school will not be limited primarily to children residing in the neighborhood, that there are parking and congestion problems caused by parents picking up and discharging children and that there are inadequate play facilities to serve the proposed school without impacting adversely an adjacent property.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the application is seeking a special exception and, incidental thereto, a variance from the parking requirements of one parking space. The applicant, to obtain this special exception, must satisfy the requirements of Paragraph 3101.41. The Board concludes that the applicant has not met the requirements in that the proposed use, as found in findings no. 4 and 12, is not reasonably necessary or convenient to the neighborhood which it is proposed to serve and that the enrollment at such school will not be limited primarily to children residing in that neighborhood. Also, as found in findings nos. 8, 10 and 12 the use is so located and the activities to be conducted therein will be such that it is likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or other objectionable conditions. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Connie Fortune, Charles R. Norris, William F. McIntosh and Leonard L. McCants to deny, Walter B. Lewis not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 14 APR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT,"