

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13514, of Russell and Margaret S. Dixon, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to use the first and second floors of the subject premises as a nursery school consisting of forty students, two teachers and one aide and for a variance from the play area requirements (Sub-paragraph 3101.41(d)) in an R-2 District at the premises 3315 Martin Luther King Jr. Avenue., S.E., (Square E-6004, Lot 8).

HEARING DATES: July 15 and September 16, 1981
DECISION DATE: October 7, 1981

FINDINGS OF FACT:

1. The application was first scheduled for the public hearing of July 15, 1981. It appeared on the Preliminary Calendar since the applicant had not complied with Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA in that the applicant posted the subject property eight days prior to the public hearing instead of ten days and the applicant filed the affidavit of posting two days prior to the public hearing instead of the required five days. The Chairman denied a waiver of the Rule since good cause was not shown, and the case was rescheduled for public hearing on September 16, 1981.

2. The subject site is located on the north side of Martin Luther King Jr. Avenue, between Waclark Place and High View Place and is known as premises 3315 Martin Luther King Jr. Ave. S.E. It is in an R-2 District.

3. The site comprises approximately 2700 square feet. It is improved with a three story brick detached dwelling. A fifteen foot alley is located to the rear of the site.

4. To the east of the site are similar detached dwellings on lots of comparable size. To the west is a four-story apartment building, followed by detached houses. South of the site, across Martin Luther King, Jr. Avenue, is a new development of about fifty row dwellings on land previously used for Defense Department housing. North of the site the land use is predominantly residential. The subject site is located in an R-2 District that extends for several blocks to the north. The south side of Martin Luther King, Jr. Avenue is zoned R-4. A commercial corridor, zoned C-2-A begins approximately 400 feet east of the site.

5. The applicant seeks a special exception to use the first and second floors of the dwelling as a nursery school consisting of forty children, two teachers and one aide. The applicant also seeks a variance from the play area requirements of 4,000 square feet on the site.

6. The school will operate on a full-time basis, 7:00 a.m. to 6:00 p.m., five days a week, accommodating forty children ranging in ages from two to five years, with a focus on pre-school and kindergarten instruction.

7. The school will have no articles of commerce for sale.

8. There are four day care centers within four blocks of the subject site.

9. The applicant anticipates that her clients will come from the immediate neighborhood. The applicant is relying on clients coming from the fifty recently constructed row houses to the south of the subject site and eventually, from the large vacant parcel to the west when it is developed. The applicant presently has no prospective clients. The applicant has not sent out any flyers in the neighborhood announcing her plan and requesting a response to her proposed services.

10. The applicant expresses a general need for day care centers but no evidence has been submitted that there is a need for such services in the immediate neighborhood. There is no probative evidence of record that the enrollment at the proposed center will be limited primarily to children residing in the neighborhood.

11. The applicant has submitted two letters to the record from the Southeast Neighborhood House and the Esther Place Pre-school. The Board finds that these letters address themselves to a general need for pre-school centers in the Anacostia area but do not establish the need for one in the subject area.

12. The applicant also submitted a petition with fifty-three signatures in favor of the application. The signers state that they are from the Congress Heights Community and that the proposed center will be a needed service to the community. The Board finds that this is a general approval. None of the signers indicated that they will use such services. None of the signers addressed themselves to the relief that the applicant is seeking from the Board.

13. Sub-paragraph 3101.41(d) of the Zoning Regulations requires that 100 square feet of outdoor play area be provided on site for each child. For the subject proposal this is a 4,000 square foot requirement. The subject site has a fenced backyard of about 1,200 square feet that could be used as outdoor play area. It is anticipated that the children will also use some of the interior of the subject structure for additional play area. The variance relief requested is for about 2,800 square feet of play area, or about seventy percent.

In addition to on-site play area the applicant would use the playground at the Congress Heights School, approximately 800 feet east of the subject site. There is no guarantee that space could be reserved at said playground. It is a public area available to all on a first come basis.

14. The applicant presented no evidence or testimony that the site is affected by any extraordinary or unusual situation or conditions that would warrant the granting of a variance. The applicant testified that no undue noise will arise because of forty children on the site. The applicant introduced into the record a letter of support for the application from the abutting property owner residing at 3313 Martin Luther King Jr. Avenue. Such owner advised that she was confident that the applicant would monitor all activities so that no adverse changes arose that might effect the routine or normal living habits within the area.

15. There is no persuasive evidence in the record that the center is so located and the activities to be conducted therein will be such that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students or other objectionable conditions.

16. The Office of Planning and Development, by report filed June 10, 1981, recommended that the application be approved. The OPD reported that the services provided by day care centers will be of increasing demand in this area due to recent residential development. The applicants, by making efficient use of the subject site and the nearby schoolyard, could conduct the proposed day care center in a manner that would have no adverse impacts on adjoining and nearby properties. The Board, for reasons discussed above, does not concur in the OPD recommendation.

17. Advisory Neighborhood Commission - 8A made no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires evidence that the applicant has complied with the requirements of Paragraph 3101.41 of the Zoning Regulations and established a basis for the variance relief from Sub-paragraph 3101.41(d). The Board concludes that the applicant has not met the burden of proof as evidenced in Finding Nos. 9 through 14.

The Board further concludes that the relief cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations. Accordingly, it is ORDERED that the application is DENIED.

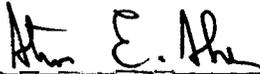
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VOTE: 5-0 (Douglas J. Patton, Walter B. Lewis, Charles R. Norris,
William F. McIntosh and Connie Fortune to DENY).

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

FINAL DATE OF ORDER: 21 DEC 1981

ATTESTED BY: 
STEVEN E. SHER
Executive Director

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."