

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No.13766 of Delores T. Conrad, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to continue the operation of a day-care center and to modify condition three of BZA Order No. 13244 by increasing the enrollment from thirty to sixty children and six staff in an R-2 District at the premises 3940 Pennsylvania Avenue, S.E., (Square 5520, Lot 11).

HEARING DATE: June 9, 1982
DECISION DATE: June 9, 1982 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the north side of Pennsylvania Avenue between Fort Davis Street and 40th Street, S.E. and is known as 3940 Pennsylvania Avenue, S.E. It is in an R-2 District.

2. The subject site is 5,250 square feet in area and is improved with a two story and basement single family dwelling. There is a garage located on the west side of the property.

3. The subject day care center was first established by BZA Order No. 10643, dated March 11, 1971. Its continuance has subsequently been approved by the BZA for three year terms.

4. The day-care center is now operating under permission of the BZA under Order No. 13244 which expires March 22, 1983. Condition No. 3 of that Order limited the maximum enrollment to thirty children.

5. On March 17, 1982 the applicant filed the subject application to continue the operation of the day-care center and to modify condition No. 3 of the Board's prior Order by increasing the enrollment to sixty students.

6. The Office of Planning and Development, by report dated June 4, 1982, advised the Board that the applicant has been operating the subject day care center since 1977 without having obtained a license for child care facilities from the Department of Human Services. Both of the last two Orders of the Board, Orders No. 12186 dated March 22, 1977, and Order No. 13244, dated August 25, 1980, each for

a period of three years, limited the enrollment to thirty children. Inspection by DHS evidenced that the enrollment was greater than thirty. The DHS refused to issue a license since the applicant was not in compliance with the BZA Orders.

7. The Board did not entertain any further issues in the OPD report.

8. The Board on its own motion DENIED the application for failure of the applicant to comply with the two previous Orders of the Board and for the applicant's failure to obtain a license from the Department of Human Services.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that it will not hear the subject application on its merits. The Board admonished the applicant to obtain without delay the necessary license to continue the present use. Upon obtaining the license, the applicant will legally be able to continue operating the subject facility for a maximum of thirty students until March 22, 1983, pursuant to BZA Order No. 13244. The Board is of the opinion that the applicant does not now come before it with clean hands in requesting an increase in the enrollment of students by thirty. The Board does not treat lightly the apparent indifference of the applicant to the Board's Orders. Accordingly, it is ORDERED that the present application is DENIED.

VOTE: 3-0 (Connie Fortune, Lindsley Williams and Charles R. Norris to deny, Douglas J. Patton and William F. McIntosh not present, not voting).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: DEC - 3 1982

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."