

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14081 of Delores T. Conrad, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to continue to use all floors and basement of the subject premises as a child development center for thirty children, five teachers and one aide, in an R-2 District at premises 3940 Pennsylvania Avenue, S.E., (Square 5520, Lot 11).

HEARING DATE: December 21, 1983
DECISION DATE: January 11, 1984

FINDINGS OF FACT:

1. The subject site is located on the north side of Pennsylvania Avenue, S.E. between 40th Street on the east and Fort Davis Street on the west. The site is in an R-2 District and is known as premises 3940 Pennsylvania Avenue, S.E.
2. The subject lot is rectangular in shape. Its dimensions are fifty feet on the north and south sides and 105 feet on the east and west sides. It has an area of approximately 5,250 square feet.
3. The site is improved with a single-family detached residential structure that is currently in use as a child development center. The building is a two-story brick structure with a basement. A one story garage adjoins the subject structure on its west and opens onto the south or front of the site.
4. The subject site has been used as a child development center since March 11, 1971, when the use was established pursuant to BZA Order No. 10643. The continuance of the use has subsequently been approved by the BZA for three-year terms in BZA Orders dated 1974, 1977 and 1980.
5. There is access to and from the subject site through Pennsylvania Avenue on the south. There is no alley access.
6. The subject square is zoned R-2 and is developed with medium-density residential uses. A two-story apartment building is located adjacent to the subject site on the west, a single-family dwelling is adjacent to the subject site on the east, and semi-detached dwellings adjoin the

subject site on its north with their rear yards abutting the rear yard of the subject site.

7. The subject neighborhood is zoned R-2 on the north side of Pennsylvania Avenue, and R-5-A on the south side of Pennsylvania Avenue. The north side is developed primarily with detached and semi-detached dwellings while the south side is developed with apartment buildings. A C-2-A shopping district is located one block west of the subject site at the intersection of Pennsylvania and Alabama Avenues. West of Alabama Avenue is an R-1-B District. Five major public parks are located within a ten-block radius of the subject site.

8. The subject property is owned by the applicant who uses the entire premises as a child development center known as the "Little People's Paradise Nursery." The subject center has a capacity of thirty children, ages two through four. The hours of operation are from 6:30 A.M. to 6:30 P.M., Monday through Friday. The staff consists of five teachers and one teacher's aide.

9. The majority of the children who attend the center reside within walking distance of the subject center. Those who do not walk to the center are transported to and from the center by their parents using automobiles. There is a walkway to guide the children into the center when their parents drop them off on Pennsylvania Avenue. There is adequate curb-side standing area for the safe pick-up and drop-off of children. The majority of the staff travels to and from the center by public transportation. The applicant and one other staff member arrive by car but encounter no traffic or parking problems since they arrive before the rush hour. Parking is permitted on one side or the other of Pennsylvania Avenue at all times.

10. The rear yard of the subject site is used as a play area. The play equipment includes swings, a sliding board, see-saws, a climber, a merry-go-round, benches and picnic tables. The children play in supervised groups of approximately ten at a time. The perimeter of the rear play area is planted with hedges, young trees, honeysuckle and ivy.

11. The applicant has received no complaints from the neighborhood residents. In the applicant's opinion, the center and its operations are very pleasing to the parents most of whom are local residents. The property is clean and well-maintained. The maintenance work is done by the applicant and her husband, who work in the yard on weekends tending the plantings. The trash is stored in two large steel drums and is removed approximately three times a week by the applicant's husband.

12. The applicant proposes to continue the child development center use for a period of three years or longer, subject to the Board's approval. The existing certificate of occupancy has expired. There are presently twenty-four children enrolled at the subject center. Their parents would prefer that they continue receiving the center's services. There would be no changes in the hours of operation or in the number of staff. The maximum enrollment would remain at thirty children.

13. The Board of Zoning Adjustment has the authority to grant a special exception to continue a child development center under Sub-section 8207.2 and Paragraph 3101.41 of the D.C. Zoning Regulations. Sub-section 8207.2 provides that the Board is authorized to grant special exceptions where in the judgement of the Board such special exceptions will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property.

14. Paragraph 3101.41 provides that a child development center in an R-2 District shall meet the following requirements:

- a. The center shall be capable of meeting all applicable code and licensing requirements.
- b. The center shall be so located and designed as to create no objectionable traffic conditions and no unsafe conditions for picking-up and dropping-off children.
- c. The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors.
- d. The center, including any outdoor play space provided, is so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectional conditions. The Board may require such special treatment in the way of design, screening of buildings, planting and parking areas, signs or other requirements as it shall deem necessary to protect adjacent and nearby properties.
- e. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between such play area and the center itself.
- f. The Board may approve more than one child

development center in a square or within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise operations or other similar factors.

- g. Before taking final action on an application for such use, the Board shall submit the application to the D.C. Department of Human Services, D.C. Department of Transportation and the D.C. Office of Planning for review and written reports. The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District of Columbia.

15. The Department of Consumer and Regulatory Affairs, by report dated November 21, 1983, found that the subject child development facility meets all licensing requirements of the District of Columbia.

16. The Office of Planning, by report dated December 14, 1983, recommended that the application be approved with conditions. The Office of Planning was of the opinion that the applicant met the purpose and intent of Paragraph 8207.2 as well as the criteria set forth in Sub-section 3101.41. The Office of Planning recommended that this request should be approved provided the applicant furnish some protective landscape along the perimeter of the existing playground. The Office of Planning submitted a list of suitable planting material in a report dated January 4, 1984. The Board concurs with the recommendation of the Office of Planning.

17. One letter of qualified support was submitted to the record by a neighboring property owner. The property owner had no objection to the child development center as long as the number of children was limited to thirty and the staff was limited to five teachers and one aide. However, the neighbor did object to the occasions when trash is left outside over the weekends, attracting dogs or cats.

18. The applicant testified in response to the neighbor's complaint that the steel drums containing the trash from the center are tightly sealed. The drums have been located at the garage door while awaiting collection and disposal. In the future, the applicant will store the trash drums in the garage on the subject property.

19. Advisory Neighborhood Commission 7B made no report on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception to continue to operate a child development center in an R-2 District. The granting of such a special exception requires a showing through substantial evidence that the proposed use satisfies all requirements of Paragraph 3101.41 and Sub-section 8207.2 of the D.C. Zoning Regulations.

The Board concludes that the applicant has met the burden of proof. The proposed child development center meets all applicable code and licensing requirements as reported by the D.C. Department of Consumer and Regulatory Affairs. No objectionable traffic condition and no unsafe condition for the picking-up and dropping-off of children will be created because the center is so located and designed that it utilizes available curb-side space for parents who temporarily stop their cars while delivering or picking-up their children. Although on-street parking in the neighborhood is adequate, there is also a garage available on the subject premises. The center and its outdoor play space are so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The Board as hereinafter conditioned has required additional planting at the perimeter of the play area to buffer adjacent and nearby properties from objectionable noise. No off-site play area is proposed. No other child development center exists within 1,000 feet of the subject center. The application has been submitted to all applicable D.C. agencies and the Board was received positive replies.

The Board further concludes that the requested relief if granted will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FIVE YEARS from the date of expiration of the prior order, namely from August 25, 1983.
2. Approval shall be limited to the operation of the child development center by this applicant only.
3. The hours of operation shall not exceed from 6:30 A.M. to 6:30 P.M.
4. The number of children enrolled shall not exceed thirty. The number of staff shall not exceed five teachers and one aide.

5. The trash containers shall be stored inside the premises.
6. The applicant shall add additional plant material, as recommended by the Office of Planning in its memorandum dated January 4, 1984, along the chain link fence which surrounds the rear yard, so as to buffer those areas where the existing landscaping is insufficient to create a solid screen.

VOTE: 3-0 (Douglas J. Patton, Lindsley Williams and Carrie L. Thornhill to grant; William F. McIntosh not present, not voting; Charles R. Norris 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: APR 30 1984

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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