

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14292, of the Sixth Presbyterian Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to use the basement, first and second floors of the subject premises as a child development center for 115 children, ages 2½ years to 8 years, and eighteen staff in an R-1-B District at premises 5413 - 16th Street, N.W., (Square 2718, Lot 853).

HEARING DATE: July 31, 1985
DECISION DATE: September 4, 1985

FINDINGS OF FACT:

1. The application, as filed sought a special exception for a child development center for 110 children and fourteen staff. At the public hearing, the applicant amended the application to seek a special exception for a child development center for 115 children and eighteen staff. The additional enrollment and corresponding staff reflect the center's predictions for the fall 1986 registration. At the time of filing the application, the enrollment could not be accurately predicted. The Board finds that the increased number of children and staff is not substantial and that no potential party has been prejudiced by the amendment of the application.

2. The subject premises, known as 5413 16th Street, N.W., is located at the southeast corner of the intersection of 16th Street and Kennedy Street. The site is located in the R-1-B District.

3. The subject lot has an area of approximately 34,710.85 square feet. It is improved with a two-story stone church, a parking lot containing seventeen parking spaces, and a recreation area. The parking lot is accessible by way of a ten and fifteen foot public alley system running along the applicant's rear property line.

4. The surrounding neighboring of the subject site is characterized by large single-family detached dwelling units located within an R-1-B District. There are a number of embassies in the neighborhood located for the most part along 16th Street. Also along 16th Street in the same Square as the subject premises are two churches located within former residential structures. Immediately to the

west of the site across 16th Street is the Brightwood Recreation Center, which is a part of Rock Creek Park.

5. The subject structure is occupied by the Sixth Presbyterian Church and the Lowell School.

6. The Lowell School is a private, nonprofit and non-sectarian school. The Lowell School has been in existence since 1965. It was originally located at 34th and Lowell Streets, N.W. The school relocated to its present location at the Sixth Presbyterian Church in 1977. The school has never had a certificate of occupancy to operate at the subject site.

7. The applicant is seeking a special exception to continue to operate and expand the child development center and early primary grade school at the subject site. The granting of the special exception requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 3101.41 of the Zoning Regulations and that the relief requested under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

8. Paragraph 3101.41 states that a child development center may be approved, provided that:

- 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 condition and no unsafe condition 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 objectionable 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 Public Works 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.

9. The Lowell School currently enrolls a total of ninety-seven students. It has thirteen teachers and one director. The children range in age from two and one-half through eight years.

10. The center provides nursery school and primary school activities and education for the children. The school seeks to offer a stimulating environment and the guidance of teachers who respect individuality. The student-teacher ratio is one through eight in the nursery and one through ten in the kindergarten to the second grade.

11. Twenty-five percent of the center's students live in N.W. Washington, east of Rock Creek Parkway. Ninety-five percent of the students live in Washington, D.C. Twenty families with children enrolled at the center live within one mile of the center. Ten students live within walking distance of the center.

12. The center occupies a number of classrooms and a large multipurpose room in the basement, first and second floors of the rear of the Sixth Presbyterian Church.

13. The center operates from 8:30 A.M. to 3:00 P.M., Monday through Friday.

14. The center will continue to have its trash removed daily.

15. The Lowell School is currently licensed by the Department of Consumer and Regulatory Affairs and has been continuously licensed for the past nineteen years.

16. The children attending the center are picked-up and dropped-off on the church property to the rear of the church. The parents approach the school from the far public

alley to the east which accesses the church property from Kennedy Street. A teacher escorts the child from the car to the school and back to the car from the school. Vehicles exit the church parking lot onto the western branch of the alley which runs adjacent to the church property and ends at Kennedy Street.

17. The pick-ups and drop-offs to the center are staggered during the day. Approximately fifty cars arrive in the morning between the hours of 8:30 and 9:30 A.M. Twenty cars arrive at 12:00 noon to pick-up nursery school children and twenty cars arrive at 3:00 P.M. to pick-up kindergarten and primary school students.

18. The center encourages parents to travel to the center in carpools. Five cars can be stacked on the church's property while waiting to pick-up or discharge passengers.

19. If a traffic report for hazardous weather conditions has been issued, the Director cancels school. When necessary, a private plow will be hired by the Center to plow the alley adjacent to the church and the church parking lot. Parents are directed to stop their vehicles at Kennedy Street and the staff escorts the children from the cars via the plowed alley into the playground.

20. The director of the center had met with neighbors of the subject site who had concerns about cars waiting to enter the site blocking the alley which is entered from Colorado Avenue. The director sent directives to drivers to the center instructing them not to use the Colorado Avenue alley. In addition, a sign is posted at the exit from the church property onto the Kennedy Street eastern alley requesting drivers not to block the alley.

21. The church parking lot contains seventeen parking spaces and is located to the rear of the church, accessible by way of public alley. Fifteen spaces in this lot are available for use by staff members and visitors to the child development center. The parking lot provides more spaces than are required by the Zoning Regulations. The Zoning Regulations require one space per four employees. The Lowell School agreed to mark five spaces as reserved for use by the center.

22. Seventy-five percent of all the center's activities will be conducted indoors. The Lowell School outdoor play area is located on-site to the south of the church. The playground area is approximately fifty feet by 255.49 feet and is fenced in. The play area includes permanent climbing equipment and portable play and sports equipment. The playground is buffered from adjacent properties by a fenced parking lot on the one side and a number of large trees and another fence on the other. The school has not received any

complaints regarding the children's playground activities from neighbors. The children are supervised by the teachers in traveling to and from the playground and the classrooms.

23. Rock Creek Park, which is located directly across 16th Street to the west, provides an additional location for recreational activities. If the park is used, the traffic signal at Kennedy and 16th Street provides an adequate safety measure to ensure safe passage of children and supervisors across 16th Street.

24. There are no other child development centers located in the subject square or within 1,000 feet of the Lowell School.

25. The Office of Planning, by report dated June 5, 1985, recommended conditional approval of the subject application. OP reported that the subject child development center already possesses a valid operating license, but this license must be updated in light of the applicant's desire to increase the center's enrollment. Staff of the Department of Consumer and Regulatory Affairs (DCRA), the licensing entity, had advised OP that there is sufficient space to accommodate twenty additional students and that the proposed center is capable of meeting all applicable licensing requirements.

26. The Office of Planning further reported that the subject child development center has existed at its current location for eight years. The lack of complaints in the file concerning the center's operation suggested that the center is located and designed in a manner which precludes objectionable impacts on adjacent or nearby properties. This appears even with regard to the outdoor play space. The OP recommended that the granting of this application be subject to the following CONDITIONS:

1. Approval shall be limited to the current operator.
2. The number of students shall not exceed 115.
3. The hours of operation shall be limited to 8:30 A.M. to 3:30 P.M.
4. Five parking spaces in the church parking lot shall be clearly marked as reserved for the proposed center's personnel.

The Board concurs with the OP's recommendations.

27. The Department of Public Works, by memorandum dated May 7, 1985, reported that the continuation of the child development center will not have a significant effect

on the surrounding street system. The DPW further reported as to the street system servicing the site; 16th Street is a fifty foot wide major arterial with an average daily traffic volume of 30,500 vehicles. Parking is prohibited at all times on this street. Kennedy Street is a thirty foot wide collector street with an average traffic volume of 3,500 vehicles per day. Parking on the south side of the street is prohibited, but two-hour parking between 9:30 A.M. and 6:30 P.M. on the north side of the street is permitted. Colorado Avenue is a 40-foot-wide collector street with an average daily traffic volume of 4,200 vehicles. Parking on the south side of the street is unrestricted. On the north side, unrestricted or two-hour parking between 7:00 A.M. and 6:30 P.M. is permitted on half of the street while the other half is reserved for embassy parking and 14th Street is a fifty foot wide collector street with an average daily traffic volume of 10,000 vehicles. Parking is prohibited on this street.

28. The site is served directly along 16th Street by the S1, S2, S3, S4, and S5 Metrobus routes. Within one block, east on Kennedy Street, the E2, E3, E4, and E5 routes are located. In addition, the 50, 52, and 54 routes are located on 14th Street, within a one block radius of the site.

29. The Department of Public Works recommended that, although the subject parking lot meets the Zoning Regulations requirement and one parking space is currently reserved for the Director of the center the spaces provided be clearly marked as reserved for use by other center personnel. The DPW recommended that the center maintain its pattern for vehicular access and pick-up and discharging passengers utilizing the Kennedy Street alley from east to west. The Board concurs with the DPW's assessment and recommendations.

30. Advisory Neighborhood Commission 4B reported by letter dated June 11, 1985, that it did not oppose the granting of the subject application. The ANC further reported that it had found the subject operation to be well maintained, the traffic pattern efficient and the school to be a good neighbor. The Board concurs.

31. Thirteen persons who have children who attend or have attended the school testified at the public hearing or submitted letters to the record in support of the application. Many of these parents live in the neighborhood of the school. Numerous parents praised the quality of the educational program at the school which offers small classes, individualized attention for students, and experienced, well-trained teachers. The school's presence has had a positive effect on property values in the neighborhood and attracts young families to the area. A number of the proponents

testified that they had never encountered any traffic problems in the alley in connection with the picking-up and dropping-off of students at the center. To relieve congestion, drivers to the school have demonstrated their willingness to carpool and follow traffic directives issued by the school.

32. Another witness in support of the application testified that he had had a concern about the traffic flow and the impacts on the alley system. In conjunction with two other neighbors, he met with the director of the Lowell School about these concerns. He testified that as a result of that meeting, a directive had been issued by the school to the parents directing them not to use the Colorado Avenue access point when entering and exiting the alley system. He indicated that parents accessing the alley system from Colorado Avenue were interfering with some of the residents who had garages located along the portion of the alley which intersects Colorado Avenue. The witness volunteered, if the application is granted, to send notices to those property owners asking them to use the Colorado Avenue access into and out of the alley to minimize that problem. The witness indicated that since the center had directed its parents not to access the alley system from Colorado Avenue, he had not encountered any cars in the alley. He was prepared to accept the minor inconvenience of occasionally meeting another vehicle in the alley in order to have the school located at the subject site. He believed that other neighbors were of the same opinion. The Board concurs and, through its conditions listed below, will direct the alley pattern.

33. Two letters of opposition were submitted to the record from neighboring property owners who were of the opinion that the subject school would disturb the residential neighborhood by adding litter, noise and traffic congestion to the area. The Board finds that no complaints have been received by the school concerning noise or litter generated by it in the eight years that it has been located at the subject site. If there had been, the school would have had an opportunity to address them immediately.

34. One of the property owners in opposition further wrote that he was concerned about the quality of the education the school would offer and the limited on-street parking in the area. He also stated that a school which was very disruptive to the neighborhood had operated at the site fifteen years ago. The Board finds that although there was substantial testimony as to the high educational standards of the center, it is not a zoning issue. Its accreditation is a licensing issue. Ample off-street parking is being provided on the site. The school previously operated at the

site was not affiliated with the Lowell School and each case is judged on its own merits.

35. The other property owner in opposition wrote that she was opposed to the requested variance and any changes in the Zoning Regulations. She further stated that property values in the neighborhood will be negatively affected by the school. The congregations of churches in the area, not including the Sixth Presbyterian, gather on the walk and grass in front of her house and litter and park illegally. She did not receive a notice of the ANC hearing and alleged that its' recommendation was not representative of the neighborhood since the ANC Commissioner and other persons who attended the hearing may have been parents of children enrolled in the school. The Board finds that the applicant is seeking a special exception, not a variance, from the Zoning Regulations for a use which is permitted in the R-1-B District as a compatible use. A use is deemed compatible when it meets the requirements of the section under which relief is sought. The application was not intended to change the Zoning Regulations. No probative evidence has been submitted indicating the school's negative effects on property values. The illegal parking, trespassing and littering of church congregations in the area are not zoning issues and should be referred to the Metropolitan Police Department. The manner in which the ANC conducted their hearing is an internal matter for the ANC and said issue is not properly before the Board.

36. A neighboring property owner testified at the public hearing in opposition to the application on the grounds that traffic in the alley areas has recently become worse as a result of the center. In the previous years of the school's operation, this property owner had not noticed any traffic problems associated with the school. He was concerned that the increased school enrollment would result in increased traffic congestion. The Board finds that the applicant has implemented an efficient traffic system plan which will have a minimal impact on the neighborhood. The Board has made the traffic pattern's adoption a condition to the granting of this application. The Board finds that these steps are sufficient to correct any traffic problems that may have existed in the alley.

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 that the proposal meet the requirements of Paragraph 3101.41 of the Zoning Regulations and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and the relief will not tend to affect adversely the use of neighboring property.

The Board concludes that based on the Findings of Fact, the applicant has met the burden of proof. All provisions of Paragraph 3101.41 have been complied with. The center meets all applicable code and licensing requirements and is so located that there are no objectionable traffic conditions and no unsafe conditions for picking-up and dropping-off of children. The school provides sufficient off-street parking spaces to meet the reasonable needs of their teachers, other employees, and visitors. The center, including its outdoor playground area, is located and designed so that it does not create objectionable impacts on adjacent or nearby properties due to noise and other objectionable conditions. The children are supervised when travelling to and from the playground. No other child development center is located in the subject square or within 1,000 feet of the Lowell School.

The Board further concludes that the special exception requested is in harmony with the general purpose and intent of the Zoning Regulations and Map and will have no adverse impact on the use of neighboring property. The special exception can be granted without impairing the intent, purposes and integrity of the Zoning Regulations.

The Board further concludes that it has given to Advisory Neighborhood Commission 4B the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be limited to operation of the facility by the Lowell School.
2. Approval shall be for a period of FOUR YEARS.
3. The number of students shall not exceed 115. The number of employees shall not exceed eighteen.
4. Five on-site parking spaces shall be provided and clearly marked as reserved for the exclusive use of the child development center.
5. The hours of operation shall not exceed from 8:30 A.M. to 3:30 P.M. Monday through Friday.
6. The traffic circulation plan for discharging and boarding of students shall be south on the easternmost alley off of Kennedy Street, west on the east-west alley in the center of the Square into the church parking lot, through the queing lane for boarding and discharging of students, then north on the westernmost alley returning to Kennedy Street. The applicant through the child development center shall restrict all parents to

use this circulation pattern for the Boarding and discharging of students and to refrain from entering the alley system from Colorado Avenue to the south.

VOTE: 4-0 (Charles R. Norris, Lindsley Williams, William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton not present, not voting).

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

ATTESTED BY:



CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 09 DEC 1995

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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