

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15260 of Smitty and Wilma Durham, pursuant to DCMR 3108.1, for a special exception under Section 206 to establish a child development center for 200 children and a staff of 32 in an R-4 District at premises 3400 - 4th Street, S.E., (Square 5969, Lot 11).

HEARING DATE: March 28, 1990  
DECISION DATE: April 11, 1990

FINDINGS OF FACT:

1. The subject site is located at the southeast corner of the intersection of 4th Street and Trenton Street, S.E., and is known as premises 3400 4th Street, S.E. The site is in the R-4 District.

2. The subject site, containing approximately 1.31 acres, is generally triangular in shape and is improved with two dilapidated one-story structures and two antennas. The subject site is covered with a few trees, shrubs and undergrowth and the majority of the site is fairly level. The southern portion of the property slopes steeply to the south.

3. The site is located in the Congress Heights neighborhood in the southeast sector of the city. The site has 51 feet of frontage on Trenton Street and 520 feet on 4th Street.

4. The property to the north of the subject site across Trenton Street is zoned R-2. To the east is an R-5-A District, and to the west, across 4th Street, is Ballou High School, which is in an R-5-A District. Immediately to the south of the site is a parcel of land to which the Zoning Commission has given preliminary approval as R-4 zoning (Zoning Commission Case No. 87-35). Farther south of the site, fronting on Mississippi Avenue, is a parcel of land recently zoned R-4.

5. There is a large expanse of R-2 and R-4 zoned property located approximately 200 feet to the north of the site along Savannah Street and Martin Luther King, Jr. Avenue. There are two small C-1 zoned sites located several blocks east and west of the site and a pocket of R-5-B zoned property located approximately 200 feet north of the site.

6. The R-4 District permits matter-of-right development of residential uses (including detached, semi-detached and row single family dwellings and flats) with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and maximum height limit of three-stories/40 feet. The R-4 District also includes as matter-of-right development certain institutional uses, including hospitals, clinics and child development centers of up to fifteen children. Child development centers with more than fifteen children require Board of Zoning Adjustment approval.

7. The applicant proposes to construct a child development center on the subject site for 170 children and intends to relocate the Martin Luther King, Jr. Day Care Center from its present location in the Congressional Heights United Methodist Church at 421 Alabama Avenue, S.E. to the new site. The Martin Luther King, Jr. Day Care Center has been in existence at its present location for 8 years and currently services 120 children. Section 206 of the Zoning Regulations sets forth the following provisions governing Child Development Centers:

- 206.1 Use as a child development center shall be permitted in an R-1 District if approved by the Board of Zoning Adjustment in accordance with the conditions specified in §3108 of chapter 31 of this title, subject to the provisions of this section.
- 206.2 The center shall be capable of meeting all applicable code and licensing requirements.
- 206.3 The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children.
- 206.4 The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.
- 206.5 The center, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity, or visual or other objectionable conditions.
- 206.6 The Board may require 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.

- 206.7 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 the play area and the center itself.
- 206.8 The Board may approve more than one (1) child development center in a square or within one thousand feet (1,000') 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.
- 206.9 Before taking final action on an application for use as a child development center, the Board shall submit the application to the D.C. Departments of Public Works and Human Services, and the D.C. Office of Planning for review and written reports.
- 206.10 The referral to the D.C. Department of Human Services shall request advice to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District.

Section 3108 allows for special exception relief where it is in harmony with the general purpose and intent of the Zoning Regulations and Maps and where such relief will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps.

8. Granting the subject application will allow the applicant to build a larger and superior facility. The Center will be developed in accordance with the code and licensing requirements of the D.C. Department of Consumer and Regulatory Affairs (DCRA).

9. The applicant testified that the center will provide a total of 6,953.5 square feet of space for infants and children which, pursuant to the DCRA requirements, can accommodate 20 infants and 150 children.

10. The applicant testified that the number of ages of the children at the Center will be as follows: 20 infants, 60 children two and three years of age, 40 children four years of age (pre-kindergarten), 25 five year olds (kindergarten), and 25 six and seven year olds (first and second grade). The Center will be constructed to include six main rooms which will provide space for each of the age groups. In addition, a multi-purpose room, kitchen, work room, staff office, staff lounge and storage room will be provided. The Center will also provide classrooms, boys

and girls restrooms and staff restrooms. The total indoor area will be 10,378 square feet. The applicant stated that the Center will be equipped with an alarm system, identification system and high intensity outdoor lighting. In addition, all street level windows will be barred and locked when not in use and all air vents, skylights and accessible doors will be properly secured. The entire lot will be enclosed by a fence.

11. The outdoor play areas at the subject site will accommodate 150 children. The play areas will be located on the premises adjacent to the building and buffered from adjacent properties by distance and landscaping. This will eliminate the danger of crossing busy streets everyday to get to and from the off-site play area that is used in conjunction with the present location.

12. The center will have a staff of 25, thereby meeting the required teacher/child ratios.

13. The hours of operation will be from 6:30 A.M. to 6:00 P.M. Monday through Friday. A number of the children will stay at the center for only a portion of the day. The applicant has nine years experience operating child care centers in the Washington, D.C. area. The applicant is currently principal of the St. Thomas Moore School and has recently served as principal of the Assumption Catholic School. The applicant will be the center's Administrator. An Educational Director will be selected at a later date.

14. The applicant noted that children attending the school will come from a mixed economic background. Parents of low-income families who are working or are full-time students may obtain subsidies through the Department of Human Services. Scholarships will be made available to assist low income families.

15. The applicant testified that Ward 8 has the largest number of single parent headed households in the District of Columbia and that without proper day care facilities, the parents in many of these homes would be unable to work on a full-time basis. The applicant stated that there is great interest in the proposed center as evidenced by the waiting list which includes fifty names.

16. The applicant testified that the main goal of the center is to actively prepare the students for the academic challenges they will face during their early elementary education. Carefully planned out instructions will be given in such subjects as reading, math and social studies. In addition, the children will be taught the proper way of

interacting with others in a social and academic environment and will be exposed to information that will assist them in developing a sense of cultural awareness.

17. The applicant's traffic expert testified that transportation to and from the center will be accomplished in a convenient and safe manner. Eighty percent of the children will come from the surrounding neighborhood. Approximately 20 percent of the children (35) will walk or be walked to the Center's front doors. The Center will provide two buses, which will make two runs through Ward 8 to pick up approximately 50-55 percent of the children (90). The remaining children (45) will be driven and dropped-off at the site. The traffic expert stated that sight distances are adequate to provide safe ingress and egress at the site's driveways. The traffic expert concluded that there would be no adverse traffic impact resulting from the proposed child development center.

18. The applicant notes that a minority of children will be driven by their parents to the center. An elongated one-way U-shaped driveway at the front of the building will allow parents to pull their cars off of 4th Street. Staff members will be at the entrance to greet the children as they are dropped-off, in order to eliminate any potential traffic problems.

19. The architect for the applicant testified that the special exception would not impair the architectural integrity of the neighborhood. The architect described the design of the center including the interior square footage and the size of the outside play area. In addition, the architect explained that the exterior of the center would be brick, compatible with the adjacent neighborhood. In regard to traffic issues, the architect testified that the number of parking spaces has been increased to 32 and a layby is to be provided. The architect stated that the applicant has revised the plans to comply with the recommendation of the D.C. Department of Public Works.

20. The Office of Planning (OP), by memorandum dated March 20, 1990, recommended that the application be approved provided that the maximum number of children is limited to 170 and that the D.C. Department of Public Works has no objection to the proposal.

21. OP noted that, by Zoning Commission Order No. 581, dated September 5, 1988, the subject property was zoned R-4. At the public hearing on that matter, the applicants indicated that they intended to build a child development center at this location.

22. OP stated that the proposed center is capable of meeting all applicable code and licensing requirements. The Center is located and designed so as to create no objectionable traffic conditions or unsafe conditions for picking-up and dropping-off children. Parents dropping-off and picking-up children would enter the site through the elongated U-shaped driveway and would be met by a staff person. This is a safe drop-off and pick-up system for the children since they would not have to cross any streets on their way to school, and the parents would be able to watch their children until they have entered the facility.

23. OP noted that the Center is required by the Zoning Regulations to provide six parking spaces. The applicants originally proposed to provide 16 parking spaces. (The number has been increased to 32).

24. OP is of the opinion that the proposed center would be a familiar use to the neighborhood. The one-story concrete and masonry structure, would compliment existing facilities in the neighborhood. Since the center is proposed to be only one-story in height, it would not block the views from neighboring buildings. Several academic and recreational facilities are within walking distance of the subject site including the Simon Elementary School, Ballou Senior High School and Hart Junior High School and recreational facilities.

25. OP further stated that under the center's proposed plans, no off-site play area would be required. The center would include two on-site play areas consisting of over 29,832 square feet, which complies with the District of Columbia licensing requirements of 60 square feet per child. The play area is to be equipped with a jungle gym, gym bars, and swings. The play area and side yards will be landscaped.

26. Finally, OP noted that three child care centers are currently operating within one thousand feet (1,000') of the subject site. They are as follows: Merry Hill Preschool at 3331 - 5th Street, S.E. (licensed capacity - 18 children), Simon Before and After School Center at 4th & Mississippi Avenue, S.E. (licensed capacity 50 - children) and Hart Junior High School Infant Center at 601 Mississippi Avenue, S.E. (licensed capacity - 17 children). Combined, the three facilities serve 85 children. A majority of the children attending the above-listed facilities live in the neighborhood and arrive by foot.

27. The Office of Planning is of the opinion that the applicant has met the requirements of Section 206 of the Zoning Regulations. OP therefore recommends approval of the application provided that the maximum number of children is limited to 170 and that DPW has no objections to this proposal.

28. The District of Columbia, D.C. Fire Department, in a memorandum dated March 7, 1990, stated that it had no objection to the application. The Fire Department noted that the fire protection features required for the use shall be determined during the plan review/permit process.

29. The D.C. Metropolitan Police Department (MPD), Planning and Research Division, by memorandum dated March 8, 1990, stated that the proposed use will not require an increase in the level of police service currently being provided. The MPD had no opposition to the proposed use of the site.

30. The D.C. Department of Recreation, by memorandum dated February 29, 1990, reviewed the application and suggested that the site plan specify the type and layout of the play apparatus to be used, as well as the height and type of fencing proposed for the periphery of the property.

31. The applicants' site plan, dated October 24, 1988, shows the location of the play area and indicates that a chain link fence will be used around the periphery of the property. The applicant indicated, however, that the type of play equipment will be selected at a later date.

32. The Superintendent of the D.C. Public Schools in a memorandum dated March 5, 1990, stated that the child development center will not adversely affect the operations or facilities of the public schools. The Superintendent provided enrollment and capacity statistics for neighboring schools, and concluded that the D.C. Public Schools had no opposition to the application.

33. The D.C. Department of Public Works, Office of Policy and Planning, in a memorandum dated March 21, 1990, recommended the following modifications to the applicant's site plan to mitigate transportation concerns:

1. Provide a one-way driveway circulation route;
2. Design 45-degree, back-in angle parking;
3. Provide a 10-foot sidewalk, including a 4-foot tree space and wheel chair ramp;
4. Provide a layby in the parking area;
5. Establish a 40-foot building restriction line adjacent to the project on 4th Street between Trenton Street and the south property line; and
6. Extend the NO STANDING OR PARKING ANYTIME restriction to the south side of the property.

The applicants agreed to comply with all of DPW's recommendations except for the provision of 45 degree angle parking. The applicants have provided a new parking plan which eliminates the need for angled parking. The applicant testified that the sidewalk, as proposed, will allow for adequate pedestrian circulation and the retention of the needed parking spaces.

34. Advisory Neighborhood Commission (ANC) 8C, by letter dated March 20, 1990, and through testimony at the hearing, indicated that it was opposed to the application. The ANC was concerned with the traffic conditions in the area during rush hours. The ANC testified that visibility is impaired going south on 4th Street into the facility and that there are more cars in the area than the traffic study indicates. The ANC further testified that the present traffic conditions do not reflect what the future conditions will be after the development on Bolling Air Force Base is completed. The ANC is also concerned that the funding for Headstart may be taken away if the new facility is built because it is not needed with so many other day care providers already existing in the area. The additional concerns expressed in the ANC Report are that the drop-off point is too close to the entrance of the facility, that the entrance to the site creates a problem for traffic making a left turn from 4th Street to the facility and that the plans do not provide adequate parking for staff and parents. The ANC would like for the applicant to agree not to provide care for children above the second grade. The ANC requested that the Board postpone its decision until the applicant has met with the ANC again to resolve some of the issues that were raised by members of the community.

35. Responding to the ANC, the applicants assured the Board that the center will not serve children beyond the second grade. The applicants also testified that they plan to continue to meet with the ANC throughout the life of the school but that to postpone the decision of the Board until the two meet again will not guarantee an agreement on all terms.

36. The Board finds that further communication between the applicants and the community prior to a final decision in this case is important. The Board also finds that an extended postponement of the Board's decision would serve to harm the applicants because of their present month-to-month lease arrangement. The Board therefore finds it necessary to decide the case at a Special Public Meeting after the applicants and ANC have met.

37. By letter dated April 6, 1990, ANC-8C indicated that it met with the applicant on April 4, 1990, to bring the applicant and community into agreement on the issues concerning the proposed development. The ANC reiterated its

view that the child development center is not needed given the fact that so many other centers operate within 1,000 feet of the subject site. These centers, the ANC noted, provide the same services as the proposed center. The ANC suggested that the developers exchange the subject property for another property located on South Capitol Street. The ANC also indicated that there are people who are willing to purchase the property and develop it to enhance the area.

38. Responding to all of the concerns of the ANC, the Board finds that the center is needed and it will not create objectionable traffic conditions or unsafe conditions for picking-up or dropping-off children.

39. The Board finds that 32 on-site parking spaces will be adequate parking for the staff and parents.

40. The concern raised by the ANC regarding the effect of the proposed center on funding of the Headstart Program is not a matter properly before this Board, nor is the suggestion that the developers build the center on another piece of property or sell the subject site to interested buyers. The applicant is entitled to the proposed use provided the special exception criteria is met.

41. The Board finds that the cumulative effect of the Child Development Centers in the area will not have an adverse affect on the use of neighboring properties and that the need for the proposed center is demonstrated by the waiting list that presently exists for the facility's services.

42. The Board makes no finding regarding the basis upon which the Councilmember decided to support the application. The Board finds however, that, in making its decision, all factors and views which are germane to the application have been considered.

43. Responding to the ANC's concern about crime in the area, the Board relies on the report of the Metropolitan Police Department which concludes that the property will not require an increase in the level of police services currently being provided.

44. Four neighbors testified in support of the application. Each of them attested to the excellent of care that is provided by the applicant at the present facility. They also emphasized the importance of teaching children from an early age. One neighbor indicated that the facility is on a bus line and is therefore conveniently located. She stated that she has driven in the area many times and is unable to see where there is a traffic problem.

45. No one testified in opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a special exception to establish a child development center in an R-4 District. The granting of such a special exception requires a showing through substantial evidence that the proposed use is 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. The provisions of Section 206 regulating Child Development Centers must also be met. The Board concludes that the applicants have met the burden of proof.

The Board concludes that the Center is capable of meeting all applicable code and licensing requirements. The Board concludes that the location and design of the center does not create objectionable traffic conditions or conditions which make it unsafe for picking up or dropping off children.

It is the opinion of the Board that the 32 parking spaces to be provided will be adequate to meet the reasonable needs of the Center.

The Board concludes that the center and outdoor play area designed so as not to objectionably impact on adjacent or nearby properties due to noise, activity, or visual or other objectionable conditions. The Board concludes further that there will be no off-site play area.

The Board concludes that although there are other child development facilities within one thousand feet of the subject site, the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise operations or other similar factors.

The Board concludes that the application was referred to the appropriate agencies and responses were received. The Department of Human Services has determined that the proposed center can meet all licensing requirements.

It is therefore, the opinion of the Board that granting the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and that the proposed child development center will not adversely affect the use of neighboring property.

The Board has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED SUBJECT to the following CONDITIONS:

1. The Child Development Center shall be constructed in accordance with the revised plans marked as Exhibit No. 31 of the record.
2. The number of children shall not exceed 170. The number of staff shall not exceed twenty-five.
3. The hours of operation shall not exceed from 6:00 A.M. to 6:00 P.M. Monday through Friday.
4. The applicant shall provide thirty-two on-site parking spaces as shown on the revised plans marked as Exhibit No. 31 of the record.
5. Drop-off and pick-up of children shall be from the u-shaped driveway at the front of the center. A staff person shall be present at the entrance to escort children into the facility.
6. The applicant shall install appropriate signage relative to vehicular direction and parking restrictions as recommended by the DPW report marked as Exhibit No. 25 of the record.

VOTE: 3-0 (William F. McIntosh and Paula L. Jewell to grant, Charles R. Norris to grant by proxy, Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY:

  
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EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: SEP 28 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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.

15260order/LJP64

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 15260

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated SEP 28 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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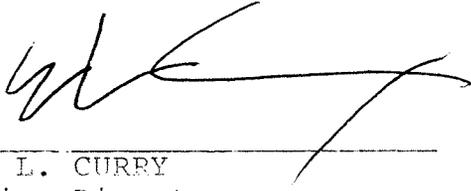
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\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director

DATE: SEP 28 1990