

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16068 of the Cleveland Park Congregational United Church of Christ, as amended, pursuant to 11 DCMR 3107.2 and 3108.1, for a variance from the off-street parking requirements (Subsection 2101.1), and a special exception under Section 205 to establish a child development center of 34 children ages two months through five years and after school child care of 20 children ages five to eight in the basement of a church in an R-1-B District at premises 3400 Lowell Street, N.W. (Square 2090, Lots 835 and 836).

HEARING DATES; July 26 and September 13, 1995
DECISION DATE: September 13, 1995 (Bench Decision)

ORDER

PROCEDURAL MATTERS:

The application was originally scheduled for the public hearing of July 26, 1995. As a preliminary matter before the hearing, the Board determined that the application required a variance from the off-street parking requirements of 11 DCMR 2101.1. The Board postponed the hearing to re-advertise the application for the public hearing of September 13, 1995.

The applicant originally filed an application for 34 children ages two months to five years and after school child care of 49 children up to age 12. The applicant amended the application to request 34 children ages two months to five-years and after school child care of 20 children ages five to eight.

SUMMARY OF EVIDENCE:

1. The subject property is located at the southwest corner of the intersection of 34th and Lowell Streets and is known as premises 3400 Lowell Street (Square 2090, Lots 835 and 836). The site is in the R-1-B zone district.

2. The site is rectangular in shape with street frontages of 150 feet on Lowell Street and 100 feet along 34th Street. The site contains approximately 15,000 square feet in land area and is improved with a church building known as the Cleveland Park Congregational United Church of Christ.

3. The existing church building is located on the eastern portion of the site. The western portion of the site is primarily open and landscaped. The main entrance to the church is located on Lowell Street. A driveway providing access from 34th Street to a parking pad at the rear of the church building is located next to

the rear wall of the church. The driveway is a double driveway that provides access to a garage on the adjoining property in addition to the parking pad on the church property.

4. The character of the area surrounding the site is primarily residential, developed with single-family detached houses interspersed with churches and schools. The John Eaton Elementary School is located diagonally across the street at the northeast corner of the intersection of Lowell and 34th Streets, N.W. The National Cathedral and St. Albans School are located two blocks southwest of the site. Commercial development and residential apartment buildings are located two blocks southwest of the site. Commercial development and residential apartment buildings are located approximately three blocks to the west along Wisconsin Avenue, N.W.

5. The R-1-B zone district permits matter of right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

6. The applicant is requesting a special exception under Section 205 and an area variance from the off-street parking requirements as specified in Subsection 2101.1 of the Zoning Regulations.

7. The applicant is proposing to use the basement of the Cleveland Park Congregational United Church of Christ building for a child development center (Cleveland Park Kinderhaus) for 34 children ages two months through five years and an after school child care component serving 20 children ages five to eight years. The facility would have a total staff of 12 persons. Nine full-time teachers for the two-month through five year olds, and three part-time teachers for the after-school component. The hours of operation for the facility would be from 7 a.m. to 6 p.m., Monday through Friday. The basement of the church is accessed from 34th Street.

8. The basement of the church where the proposed child development center would be located contains approximately 3,000 square feet of gross floor area, comprising six classrooms, an auditorium, a kitchen and toilet facilities. The D.C. Department of Consumer and Regulatory Affairs has determined that the available floor area at the premises is sufficient to accommodate the proposed level of enrollment and a preliminary inspection has been made with corrective actions identified for deficiencies. The basement was previously occupied by a private school, the Lowell Street School.

9. The applicant proposes that no preparation of food for the children would take place at the premises. The children would bring lunches with them. However, mid-morning and mid-afternoon snacks would be provided by Kinderhaus.

10. There are no parking restrictions on Lowell Street in the block the church is located. The applicant has applied to the Department of Public Works (DPW) for a special temporary permit for parking outside the church. This temporary permit, if approved by DPW, would allow a 15-minute parking zone in front of the church along Lowell Street, N.W. The applicant is proposing that the drop-off and pick-up of children would take place at this location on Lowell Street, west of 34th Street N.W.

11. The proposed child development center would have a total of 12 teachers. The Zoning Regulations require three parking spaces for 12 teachers at the proposed center. No on-site parking is available.

12. The Macomb Recreational Playground located one block from the site would be used for outdoor recreation purposes for the center. The children aged three years and above would walk to the playground, while two-year old children would be taken to the playground in strollers. Infants would be transported around the neighborhood in infant strollers. All outdoor recreation activities for the children would take place under constant staff supervision.

13. The site is located diagonally across the street from the John Eaton Elementary School. John Eaton has a pre-kindergarten program for four-year old children and an after school program for kindergarten through grade six. The proposed facility in this case is also intended to complement the after school program at John Eaton.

14. The Office of Planning (OP) by report dated August 31, 1995 concluded that the facility would not impact the area adversely and the provisions for the requested special exception have been complied with. The OP recommends that the application be approved with the following **CONDITIONS**:

- a. The hours of operation for the child development center shall not exceed 7 a.m. to 6 p.m., Monday through Friday.
- b. The center's enrollment shall not exceed 34 children ages two months through five years for full-time care and 20 children ages five to eight years for after school care.

- c. The staff of the child development center shall not exceed nine full-time teachers and three part-time teachers.
- d. The applicant shall apply for a temporary parking zone area outside the front door of the church on Lowell Street N.W. to be used as the pick-up and drop-off point for the children.
- e. The applicant shall provide written instructions to all parents that the Lowell Street frontage west of 34th Street shall be used for the pick-up and drop-off of children.
- f. The approval of the proposed child development center shall be limited to a period of three years.

15. The Department of Public Works (DPW) by report dated August 29, 1995 has no objection to the application concluding that the child development center would not adversely impact traffic circulation in the neighborhood.

16. The Fire Department by report dated July 7, 1995 has no objection to the application.

17. Advisory Neighborhood Commission (ANC) 3C by report dated July 25, 1995 has no objection to the application subject to the following conditions:

- a. The hours of operation be from 7am to 6pm, Monday through Friday;
- b. the maximum enrollment be 34 full-time infants and 20 after-school children;
- c. the staff number at maximum nine full-time staff and three part-time staff;
- d. the Church apply for a temporary parking zone outside the front door for pickup and dropoff of children;
- e. parents be given written instructions to use Lowell Street west of 34th Street as a pickup and dropoff point;
- f. Kinderhaus use the Macomb Street playground for play for the children; and

- g. Kinderhaus maintain its established policy that staff will accompany children from and to their cars.

18. By letter dated September 11, 1995 (Exhibit No. 43 of the record), and testimony at the public hearing, the applicant and the operator, Cleveland Park Kinderhaus through meetings with neighborhood residents agreed to the following conditions:

- a. Parents would drop off their children by 8:30 a.m. or after 9:00 a.m.;
- b. Kinderhaus would advertise in both the John Eaton School Newsletter and in the Washington Citizen; and
- c. Every effort would be made to obtain local students to attend Kinderhaus, thereby serving the neighborhood without impeding on the current traffic conditions.

19. A resident who resides at 3110 33rd Place, N.W., testified in support of the application, but with conditions as recommended by the ANC, OP and the residents as stipulated in Exhibit No. 43 of the record. The Board engaged the resident in an extensive discussion of the basis for the conditions set forth in Exhibit No. 43 of the record.

20. An immediate neighbor of the church residing at 3110 34th Street, N.W. testified in support of the application. The resident testified that she shares the driveway with the church and discussed traffic conditions on Lowell and 34th Streets.

21. No one appeared at the public hearing in opposition to the application, nor did the Board receive any letters in opposition to the application. Four letters were received in support of the application.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds the following:

- 1. The subject premise is capable of meeting all applicable code and licensing requirements for the child development center, and was previously used as a private school.
- 2. The center will be operated from the basement of the church, minimizing any exterior exposure.

3. Off-site play activity will occur one block from the site at the Macomb Recreational Playground. Children will be supervised to and from the playground.

4. There is no on-site play area.

5. There is no on-site parking available to meet the requirements of the Zoning Regulations. The existing driveway is shared with a contiguous property and the parking pad at the rear of the church.

6. The Board finds the ages and number of children for the center and before and after school program to be reasonable in addition to the hours of operation, days per week and staffing.

7. The location for drop-off and pick-up of children is acceptable with a parking zone on Lowell Street.

8. The Board finds acceptable the applicant's policy of having staff accompany children to and from their cars during drop-off and pick-up.

9. The Board agrees with the recommendation and conditions of the Office of Planning and Advisory Neighborhood Commission 3C.

10. Regarding the conditions agreed to by the applicant and neighbors as identified in paragraph No. 18 of the Summary of Evidence the Board finds as follows:

a. The drop-off of children before 8:30 a.m. or after 9:00 a.m. presents enforcement problems, and micromanaging by the Board. The Board disagrees with this condition because it is impractical and restrictive in nature. The Board finds that if traffic congestion does occur during this period that it would be brought to the attention of the Board as an issue of a future application to continue the center.

b. The Board disagrees with the conditions to require Kinderhaus to advertise in local newsletters or newspapers and to make every effort to obtain local students to attend Kinderhaus. The Board is sympathetic to the aims of these conditions but finds them too restrictive. The Board finds it to be satisfactory that the applicant has agreed with the neighbors to these conditions.

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 and variance. In order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Section 205 and Subsection 3108.1 of the Zoning Regulations.

The center is capable of meeting all applicable code and licensing requirements. The center is so located that it will have no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The off-site play area will not result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself. The Board concludes that there is no need to require special treatment in the way of design, screening or other requirements. The Board concludes that while objectionable traffic conditions exist in the area, the center will contribute minimally to this condition as evidenced by the prior use of the site as a private school.

The Board further concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

As to the requested variance from the off-street parking requirements, the Board concludes that such a variance is an area variance, the granting of which requires the showing of an exceptional or extraordinary condition of the property that creates a practical difficulty for the owner. The Board concludes that the site cannot accommodate the three required legal-sized parking spaces. The Board concludes that strict adherence to the Zoning Regulations would create a practical difficulty to the owner. The Board further concludes that the requested variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board further concludes that it has accorded to the Office of Planning and the Advisory Neighborhood Commission the "great weight" to which they are entitled. It is therefore **ORDERED** that the application is **GRANTED** for a period of **FOUR YEARS**, subject to the following **CONDITIONS**:

1. The hours of operation shall be between 7:00 a.m. and 6:00 p.m., Monday through Friday.

2. The enrollment shall not exceed 34 children ages two months through five years for full-time care, and 20 children ages five to eight years for after school care.
3. The staff shall not exceed nine full-time teachers and three part-time teachers.
4. The applicant shall apply for a temporary parking zone area outside the front door of the church on Lowell Street, N.W. to be used as the pick-up and drop-off point for the children.
5. The applicant shall provide written instructions to all parents that the Lowell Street frontage west of 34th Street shall be used for the pick-up and drop-off of children.
6. The applicant shall have staff to accompany children to and from their cars during drop-off and pick-up. Staff shall accompany children for drop-off between the hours of 7:00 a.m. and 9:00 a.m.
7. The applicant shall use the Macomb Street playground as the main play area for the children.

Vote: 5-0 (Angel F. Clarens, Susan Morgan Hinton, Laura M. Richards, John G. Parsons and Craig Ellis to grant).

4-1 (Susan Morgan Hinton, John G. Parsons, Laura M. Richards and Craig Ellis to approve the application for four years; Angel F. Clarens opposed to the motion).

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

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER:

FEB 5 1996

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,

BZA APPLICATION NO. 16068
PAGE NO. 9

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, 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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BZA APPLICATION NO. 16068

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on FEB 5 1996 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Debra A. Lane
6824 32nd Street, N.W.
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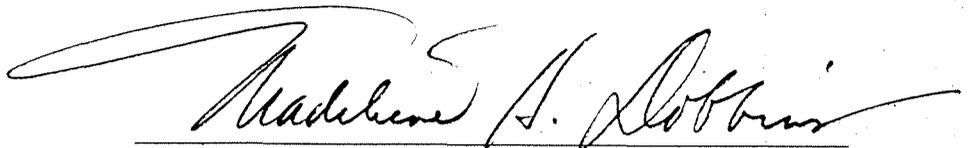
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MADELIENE H. DOBBINS
Director

Date: FEB 5 1996