

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16200 of Mt. Lebanon Baptist Church, Pursuant to 11 DCMR 3108.1, for a special exception under Section 205 to establish a child development center for 100 children and 16 staff in an existing structure in an R-4 District at premises 225 Morgan Street, N.W. (Square 555, Lot 150).

**HEARING DATE:** January 22, 1997  
**DECISION DATES:** February 5, and March 5, 1997

ORDER

PROCEDURAL MATTER:

At the public hearing, the opposition raised the issue of improper notice. The Board reviewed the record and the list of property owners within a 200-foot radius of the site. The Board found the list to be incomplete. The names of owners with addresses along N Street were not furnished to the record.

Brian Brown who resides at 208 Morgan Street, N.W., appeared at the hearing and submitted a petition of residents in opposition to the application. The petition listed six persons in opposition, four who live within the 200 block of Morgan Street, two who live on New Jersey Avenue, and one who lives on N Street. Mr. Brown later withdrew the petition and the opposition of the persons who signed the petition. Mr. Edward Anderson of 214 N Street appeared in opposition and raised the issue of notice.

The provision regarding appropriate notice of the public hearing in the Supplemental Rules of Practice and Procedure under Paragraph 3317.3(b) reads as follows:

By mailing the notice to the applicant and to the owners of all property within two hundred feet (200 ft.) of the property involved in the application;

Also, Section 3301.1 of the Supplemental Rules of Practice and Procedure state the following:

The Board may, for good cause shown, waive any of the provisions of this chapter, if in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

The Board finds that there has been actual notice of the hearing to the neighborhood by the appearance and participation of residents in the hearing. The Board finds that all other forms of notice have

been given including publication of the agenda in the D.C. Register, specific notice by mail to the Advisory Neighborhood Commission, posting of the agenda in the Office of Zoning, and posting of the property. The Board therefore under Section 3301.1 the notice to owners of property within a 200-foot radius of the site for good cause shown.

It was also raised that the applicant did not post the property on the rear or west side. Subsection 3317.5 of the Rules of Practice and Procedure requires that:

Notice shall be posted at each street frontage on the property involved, and on the front of each building located on the subject property. Each notice shall be in plain view of the public.

The Board finds that the applicant has posted the property in accordance with Subsection 3317.5 of the Rules of Practice and Procedure.

**SUMMARY OF EVIDENCE:**

1. The subject property is located at 225 Morgan Street, N.W. between New Jersey Avenue and Kirby Street.
2. The site is located in an R-4 zone which permits residential uses as a matter-of-right. The R-4 District also permits child development centers if approved by the Board of Zoning Adjustment.
3. The property is located on the north side of Morgan Street, and consists of one lot of record (150) containing 4,000 square feet of land area.
4. The lot is developed with an unoccupied three-story plus basement walk-up apartment building. The structure was built in 1924 and contains approximately four units. The structure abuts a 12-foot wide alley on the west and a 12-foot wide alley to the north. The rear yard provides parking for four vehicles.
5. The area surrounding the site is characterized by having primarily residential uses. There is a wide range of semi-detached dwellings, single-family dwellings, row-dwellings, and flats in this area. Dunbar High School is located one block to the north of the site at New Jersey Avenue and N Street. A playground that is owned by the city is situated one block to the east of the site at Kirby and Morgan streets N.W.
6. Mt. Lebanon Baptist church purchased the property in 1994. The church is located directly across the street from the site on the southeastern corner of the intersection of New Jersey Avenue and Morgan Street. The church has been maintaining the property since it was purchased.

7. The applicant is requesting a special exception to establish a child development center in the R-4 zone. The applicant would use the existing structure for the proposed use. The facility would serve 100 children ranging in ages from infant to 10 years, and would be staffed by 16 persons.

8. The facility would operate from 6:00 a.m. to 9:00 p.m., Monday through Friday, and from 9:00 a.m. to 5:00 p.m. on Saturdays, and would provide meals and regular day care programs.

9. The children would be supervised by staff at all times while in the center, and when taken outside for recreational activities. The arrival and departure of the children would be under staff supervision at all times.

10. Brian Brown who resides at 208 Morgan Street, N.W., appeared at the hearing and submitted a petition of residents in opposition. Mr. Brown stated that the applicant failed to provide proper notice. At the hearing, Mr. Brown withdrew the petition in opposition.

11. Mr. Edward Anderson, an opponent who lives at 214 N Street, N.W., appeared and testified at the hearing. His concerns were the following: (a) when parents drop off children it would be dangerous and parking would be even more congested than it already is; (b) there would not be enough yard space for the children to play; playing on the sidewalks and in the alleys would be unsafe and inappropriate; if the children use the New York Avenue recreation center facility, their time would be limited because there is already a day care center there; (c) staffing would require 10 people; (d) he believes his property is within 200 feet, and he was not notified by mail; (e) the applicant failed to post a sign in the rear, and on the west side of the property in the alley; (f) the property's use would not generate a tax base for the District of Columbia; (g) there is a saturation of community-based facilities already in this area; (h) when opponents drive or walk by the Mt. Lebanon church on Sundays, cars are double parked, there are traffic tie-ups along the roadway, and he also noticed a number of vehicles with licenses from jurisdictions other than the District of Columbia.

12. At the public hearing, the applicant testified it has had problems with security and vandalism. A high fence was installed to deter vandalism and drug dealing on the property.

13. The applicant stated that the church plans to work closely with the community organizations and the Advisory Neighborhood Commission (ANC). The applicant also, stated that parishioners would become members of the community organizations so the church would better understand the issues, needs and concerns of the neighborhood.

14. The applicant also testified that sufficient notice was given to property owners within 200 feet, that it held a meeting with ANC 5C, and that the ANC Chairperson presented the issues and

concerns of the neighbors. The applicant stated that it was not trying to keep the project a secret.

15. Copies of letters were submitted to the record commending the efforts of Mt. Lebanon Baptist Church. The letters were from Eleanor Holmes Norton, Councilmember Harry L. Thomas, Sr., Connie Sharp, Co-Chair of the Washington Interfaith Network, Simone A. Goring, Vice President of Nations Bank, and other persons in support.

16. The Office of Zoning referred the application to the D.C. Office of Planning, the D.C. Department of Public Works, and the D.C. Department of Human Services.

17. The Office of Planning (OP) by report dated January 15, 1997 recommended approval of the application. OP was of the opinion that the center would meet all applicable code and licensing requirements. The drop-off and pick-up of children would occur at the front of the building on Morgan Street. A number of children are expected to be walked to the center. Four off street parking spaces are located at the rear of the site with access to the 12-foot wide rear alley for use by staff and visitors. All outdoor play activity would occur off-site at the public playground. OP reported that there were no other child development centers in the same square or within 1,000 feet of the proposed facility. OP found that the center complies with the requirements of Section 205 of the Zoning Regulations without any adverse impacts. The Office of Planning recommended approval with the following conditions:

- a. Approval should be for a period of FIVE years.
- b. The child development center should operate from 6:00 a.m. to 9:00 p.m., Monday through Friday, and from 9:00 a.m. to 5:00 p.m. on Saturday.
- c. The number of children attending the center should not exceed 100.
- d. The number of staff members should not exceed 16.
- e. All off-site outdoor activities should take place under staff supervision at all times.
- f. The grounds of the facility should be maintained in a neat and orderly condition at all times.
- g. Trash and refuse generated by the center should be collected at least once per week.

18. The Office of Planning (OP) referred the application to the following agencies for response and report, D.C. Department of Public Works, the D.C. Fire and Emergency Medical Services Department, the D.C. Metropolitan Police Department, the Department of Consumer and Regulatory Affairs, and the Department of Human Services.

19. At the end of the hearing the record was left open until February 5, 1997 to receive the following: (a) ANC 5C's report and waiver for filing that report; (b) contract with a company for bi-weekly trash removal; (c) letter from the D.C. Department of Recreation in reference to usage of the New York Avenue Center Playground; (d) letter addressing the age group breakdown; and (e) representation of pick-up of children.

20. Advisory Neighborhood Commission (ANC) 5C by correspondence dated January 21, 1997 requested a waiver of the seven day filing requirement to submit a report. The ANC voted unanimously to support the application. The report stated that the relief requested by the applicant appears reasonable and appropriate, that it is not anticipated that the impact of the project, for which a special exception consideration is being asked, will significantly detract from the quality of life of the residents of the immediate area. However, ANC 5C contends that parking conditions arising during certain times of the school day, may cause congestion, but it believes that the social, environmental and other benefits that will accrue to the community as a result of the development of the vacant and deteriorating property, will far outweigh the likely and admitted burden of slightly intensified problems of parking and traffic congestion during certain hours of the day. The ANC also stated that even a matter-of-right four-unit apartment building will cause some traffic congestion.

The ANC further indicated that the applicant pledged to work closely and cooperatively with residents of the neighborhood to resolve any problems related to the child development center and that a church member would be appointed to serve as liaison to the ANC.

21. By letter dated January 28, 1997, the applicant submitted a quotation for bi-weekly trash removal and a letter from the Department of Recreation and Parks (DRP) giving tentative approval based on the applicant meeting certain conditions to use the play area at the New York Avenue Recreation Center. The conditions include :

- a. provide proof of insurance covering liability for personal and property damage that may arise from use of our facility by your program participants
- b. provide proof that the participants enrolled in the Day Care program are covered for personal injury, and
- c. execute an agreement with the Department of Recreation and Parks, holding the District and the Department of Recreation, its employees, agents and assigns, harmless in any litigation that may arise involving use of the Department's facility. Additionally, coordinate hours of use to avoid conflicts with existing scheduled programs.

The applicant provided the ratio of child to adult for the day care age groups and the before and after care program. It was noted that a staff person would be at the front sidewalk to escort children being dropped off from their cars to the center between the hours of 6:30 a.m. and 8:30 a.m.

22. The opposition responded to the applicant's submission as follows:

- a. The break down by age groups is inadequate and does not provide sufficient data to assess the impact or sufficiency of the ratio.
- b. The existing playground is incapable of accommodating potentially 100 children even if there is staggered use.
- c. The playground and equipment is in a state of disrepair.
- d. Financial resources should be taken into account.
- e. The area around the site is saturated with community-oriented activities.
- f. The proposed facility is too large to provide quality care and should be reduced to no more than 30 children.

23. On February 5, 1997 the Board reopened the record to receive the following information: (a) the church's contribution to the public park, and; (b) the church's efforts to meet the conditions of the D.C. Department of Recreation for use of the park.

24. By letter dated February 25, 1997, the applicant provided a letter from the DRP to the applicant indicating that the church satisfied the conditions of the January 29, 1997 correspondence. Additionally, the church had entered into an Adopt-A-Park Agreement for the New York Avenue Playground. The church has agreed to remove a concrete play structure in the park, perform regular clean-ups and donate \$1,000 toward the purchase of new playground equipment.

**FINDINGS OF FACT:**

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

1. The Board finds that the notice requirements were met even though the applicant failed to submit a complete list of owners of property within a 200-foot radius of the site. The Board finds that actual notice was given to owners who then participated in the hearing process.

2. DRP and Mt. Lebanon Baptist Church entered into an agreement in reference to the renovation of the playground, an insurance policy would not hold DRP liable for injuries, maintenance of the parks and an agreement to cooperate with and assist DRP in the performance of the necessary administrative and regulatory functions

essential to the implementation of the program. The church agreed to contribute \$1,000 towards the purchase of new playground equipment.

3. The applicant is capable of meeting licensing and code requirements.

4. The Board agrees with the report of the Office of Planning and its recommendation to approve the application with conditions. The Board also agrees with the OP that the applicant has met the burden of proof relative to the zoning relief sought in this case, that the center would provide no adverse impacts.

5. The Department of Human Services recommended approval of the application, and stated that it is involved with other child development centers in Ward 5 and that there is a significant need for additional child care services in the area.

6. No reports were received into the record from the D.C. Department of Public Works, the D.C. Department of Fire and Emergency Medical Services, the D.C. Metropolitan Police Department, nor the D.C. Department of Consumer and Regulatory Affairs.

7. The center will provide the required number of off-street parking for 16 staff.

8. The Board agrees with the recommendation of the ANC that the center is appropriate for the site.

9. While some increase in traffic congestion may occur during drop-off and pick-up of children, it is not likely to generate significant congestion because of the small and less troubled network of streets.

10. The subject site cannot accommodate the necessary outdoor play space. Off-site play space is available at the New York Avenue Playground a short walk from the site.

11. A daycare center is located at the New York Avenue Playground with approximately 30 children. The Board finds that the cumulative effect of the two centers would not be adverse to either the neighborhood or the playground.

12. The child development center is not required to contribute to the tax base of the District.

13. A child development center is not considered to be a community-based facility under the Zoning Regulations.

14. The Board has no jurisdiction over the activity of the church itself. The center is not proposed to be open Sunday when church services occur.

15. Staffing of the center is determined by the licensing requirements of the District. With 16 staff, the applicant will be

allowed only the number of children the staff to child ratio will allow.

**CONCLUSIONS OF LAW AND OPINION:**

Based on the 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 a special exception requires a showing through substantial evidence that the relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations, and that it will not adversely affect the use of neighboring property. The applicant must also meet the requirements of 11 DCMR 205 governing child development centers.

The Board concludes that the applicant has met the burden of proof. The Board concludes that the center is capable of meeting all applicable code and licensing requirements. The Board is of the opinion that the location and design of the center will not create objectionable traffic conditions or unsafe conditions for picking up or dropping off children.

The Board is of the opinion that the application is in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend to adversely affect the use of neighboring property.

The Board concludes that it has accorded ANC 5C the "great weight" to which it is entitled. In light of the foregoing, the Board concludes that the application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

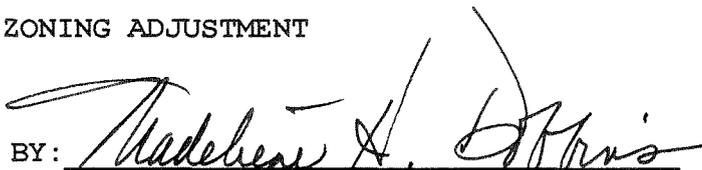
1. Approval shall be for a period of **FIVE YEARS**.
2. The child development center shall operate between 6:00 a.m. and 9:00 p.m., Monday through Friday, and between 9:00 a.m. and 5:00 p.m. on Saturdays.
3. The number of children attending the center shall not exceed 100.
4. The number of staff members shall not exceed 16.
5. All off-site outdoor activities shall take place under staff supervision at all times.
6. Outdoor play shall be restricted to the playground.
7. The children's arrival and departure shall take place under staff supervision at all times.
8. The grounds of the facility shall be maintained in a neat and orderly condition at all times.

9. Trash and refuse generated by the center shall be collected at lease once per week.

VOTE: 4-0 (Susan Morgan Hinton, Sheila Cross Reid, Angel F. Clarens, and Laura M. Richards to grant; Maybelle Taylor Bennett not present, not voting).

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

ATTESTED BY:



MADELIENE H. DOBBINS  
Director

Final Date of Order: AUG 20 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1937) 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 TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16200

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 20 1997 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

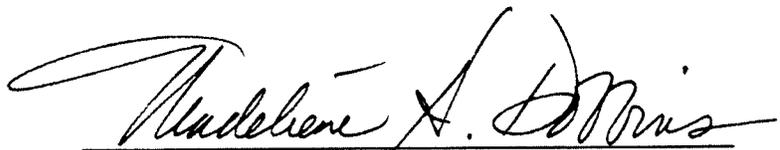
Leonard Carroll, Architect  
1113 5<sup>th</sup> Street, N.W., #3  
Washington, D.C. 20001

Jon Holliday  
414 M Street, N.W.  
Washington, D.C. 20001

Rev. H. Lionel Edmonds  
Mt. Lebanon Baptist Church  
228 Morgan Street, N.W.  
Washington, D.C. 20001

Mr. Edward Anderson  
214 N Street, N.W.  
Washington, D.C. 20001

James D. Barry, Chairperson  
Advisory Neighborhood Commission 5C  
1723 3<sup>rd</sup> St., N.E.  
Washington, D.C. 20032

  
MADELIENE H. DOBBINS  
Director

DATE: AUG 20 1997