

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16267 of Horning Brothers and the Darrell Green Youth Life Foundation, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 206 to establish a learning center for 50 students and three staff and accessory office use in the basement of a structure in an R-5-A District at premises 119 Franklin Street, N.E. (Square 3501, Lot 125).

HEARING DATES: October 15, 1997 and November 19, 1997
DECISION DATE: January 7, 1998

ORDER

SUMMARY OF EVIDENCE:

1. The Darrell Green Youth Life Foundation is located in the basement of 119 Franklin Street, N.E. Franklin Commons is a Department of Housing and Urban Development (HUD) sponsored, Section 8, subsidized housing complex, which contains 100 units. The development is located in the Ward 5 quadrant of the District of Columbia. The center, which is located in four adjacent rooms of the subject building, contains approximately 2,400 square feet and employs four people.

At the public hearing of October 15, 1997, the applicant requested that the Board waive the 14-day filing requirement to accept its pre-hearing statement into the record. The Board waived the rules to accept the document and asked the applicant to provide copies to members of the community who were seated in the audience.

2. The Darrell Green Youth Life Foundation was founded in June of 1988. The facility has been in operation at the site since the fall of 1993 (for four years). Thirty-two students are enrolled, year-round, in the program. The children arrive at the center after the dismissal of school and remain there for several hours. On average, during the weekday, the hours are from 3:00 p.m. on, depending on the activity. The children engage in after-school activities that include assistance with their homework, tutoring, mentoring, science and computer labs, Bible study, etc. During the summer, the program is expanded to a full day, between 8:00 a.m. and 4:00 p.m. There is no enrollment cost for the program. The ages of the children range from 5 to 17 years old (high school). Ninety-five percent of the children who participate in the program reside in the Franklin Commons development. The remaining five percent of children live in the community in proximity to the site.

3. The applicant indicated that the mission of the center is to train the children to become technically, educationally, and morally excellent leaders. The children are given incentives for their participation in the center's various activities. The incentives include earning points that are credited toward taking field trips throughout the year. The children are also taught character

building skills that include a sense of responsibility to self and community, integrity, compassion and service.

4. The vice president of Horning Brothers (the property owner) indicated that management is in full support of the Darrell Green Youth Life Foundation. It was stated that residents of the apartment complex were a part of the process of the development of a learning center at the site. Initially, it was a Horning Brothers project, however, that proved to be unsuccessful. Thereafter, the assistance of the Darrell Green Youth Life Foundation was solicited. The learning center has a lease agreement with Horning Brothers to use the space. There is no cost to the nonprofit foundation.

5. Horning Brothers indicated that the Department of Housing and Urban Development has mandated that social service programs be made available to residents who live in subsidized housing, particularly in anticipation of the elimination of Section 8 funds. The Horning Brothers representative testified to the importance of making programs and other opportunities available to residents of the community who are under-served or less privileged. Accordingly, the programs offered by the Darrell Green Youth Life Foundation would assist to serve that need.

6. The applicant indicated that the center would not have any objectionable impacts on adjoining and nearby properties because of noise, traffic, number of students, or other conditions. It was stated that access to the learning center is from the rear of the building, thus residents would not be disturbed when the children enter and exit. Most of the children walk to the facility; there is minimal vehicular traffic. The children assist to keep the outside of the center clean. Management is responsible for keeping the grounds of the apartment complex clean. Ample parking is available at the site to accommodate the three staff persons.

7. The president of the Franklin Commons Tenant and Civic Association indicated that the Association is opposed to the applicant's request. The reasons for the opposition were:

- **The community center room was padlocked and residents did not have access to it for three years.**

Residents of the tenants association were able to use the space that the center now occupies for their meetings. One day, quite unexpectedly, the doors were padlocked and the residents were no longer able to use the space.

- **Most of the students who use the center do not live on the premises.**

Residents have noticed automobiles that are not registered in the District of Columbia drop off and pick up children at the center. In addition, there is a large number of children attending the center who live throughout the neighborhood, whereas preference should be given to residents of the apartment complex.

- **Children who are interested in attending the center must go on a five-year waiting list.**

There are many children who have been waiting for quite sometime to attend the center and have been unable to do so.

- **The space that management has offered the tenants association to use in lieu of the existing community center is a storage area that is unacceptable.**

The space needs substantial renovation to be made habitable.

8. Horning Brothers stated that management was in the process of preparing another space for the tenant association. The new space, characterized as currently having cinder block walls, would contain two rooms of approximately 200 square feet each. The rooms were previously used for storage and would be renovated to include new carpet, paint, a restroom, the installation of windows, and new heating and air conditioning units. Also, management offered to have residents assist in the design and development of the new space that they would be occupying

9. The Board inquired about the space that would be made available to the Franklin Commons Tenant and Civic Association. Specifically, the Board asked why the space was not made available prior to the hearing, thus obviating the need for the opposition. The property owner stated that, to his knowledge, the residents had not been active enough to need a regular meeting place. It was also stated that the tenant association had only recently arrived at a point in its development where it wanted to expand its agenda, thus providing more community services.

10. In addition to the aforementioned, the applicant provided the following response to the concerns raised by the Franklin Commons Tenant and Civic Association:

- a. A waiting list is in place for children who wish to attend the center. However, the list was developed as a result of the applicant receiving an overwhelming number of requests. Generally, everyone who is on the waiting list receives a letter about the organization and asking them to patiently wait. At the time of the public hearing, the applicant had 35 children on a waiting list.
- b. Preference is given to the children who reside in the apartment complex. At all times, a majority of the children who are enrolled in the program live on the premises. Every effort is made to first accommodate the children of the Franklin Commons complex. The testimony varies, however, upon final count by the applicant, it was indicated that eight of the 35 children who were enrolled in the program did not reside in the apartment complex.
- c. There has been an overwhelming demand for children to participate in the program. As many as 40 or 42 children have been enrolled in the program at one time. Accordingly, approval is sought to amend this application for the number of children in attendance, from 35 to 50. With the maximum number set at 50, more children could be accommodated at the center.

- d. Children come into the center at the age of five years old. It is anticipated that they will be there until they are 17 (when they are ready for college). There are nine year old students enrolled in the center who have been attending since they were five. The number of openings is minimal. As such, the turnover rate is extremely low.
- e. The community center at one time was padlocked. The residents never had complete access to the space that the center occupies. The residents were always required to obtain permission to use the space. Further, management had been trying for sometime to establish a learning center at the site. The effort was unsuccessful until the Darrell Green Youth Life Foundation came along.

11. The Board granted the request of the Advisory Neighborhood Commission (ANC) 5C to waive the seven-day filing requirement for submission of its report. The report dated October 10, 1997 stated that the ANC voted, unanimously, at its July 17, 1997 meeting to support the application. The ANC's correspondence (Exhibit 26) reads, in part, as follows:

The Darrell Green Youth Life Foundation has a tradition of activism in the Washington Metropolitan Area, particularly as it relates to the rendering of support and other services to children. According to the Foundation's executive director, every reasonable effort will be made to give priority consideration to those youths from ANC 5C who apply for enrollment. A formal mechanism will be worked out between the leadership of the Learning Center and ANC 5C that any future concerns that may arise in connection with the operation of the program may be discussed and resolved in a productive, cooperative, and mutually acceptable manner. Therefore, we regard the location of the Darrell Green Learning Center as a 'win-win' situation for ANC 5C and we encourage the BZA to grant the applicants the zoning relief they have requested.

The ANC met all of the filing requirements identified in Section 3307 of the Zoning Regulations.

12. Based on testimony that the Board received on October 15, 1997, the parties were encouraged to work out their differences. The Board noted that the tenant association was not opposed to the activities of the Darrell Green Youth Life Foundation. Rather, they wanted a place to hold meetings and other activities. The Board encouraged the parties, and they agreed, to discuss their differences and return with an acceptable compromise. The hearing was continued to November 19, 1997.

At the November hearing, the applicants indicated that space was offered to the Franklin Commons Tenant and Civic Association as outlined in its correspondence of November 3, 1997 (Exhibit 33). The letter indicates that management is prepared to fully build out and equip two meeting rooms with heat/air conditioning, lighting, finished walls and ceilings, complete bathroom and install floor covering. In addition, a third room would be made available for the community's use. The tenant association would have to make the necessary improvements (to the third room) as it sees fit.

14. The Board inquired about the size of the rooms that the tenant association would be using. It was stated that each of the three rooms is approximately 7 feet by 30 feet (210 square feet). In two of the three rooms, a portion of the space would be used for a bathroom. The actual meeting space in each room would be approximately 160 - 170 square feet.

15. Three tenants who reside at the apartment complex testified that the Fire Marshall found the space that the applicants are proposing for use by the association to be unsafe. No more than ten people could be accommodated in the rooms, after installation of the bathrooms. They also testified that the staff of the learning center had not been responsive to inquiries from residents about the programs and activities. Residents have tried, continually, without success to enroll their children in the center.

16. The tenant association advised the Board that its preference is to share the space with the learning center. However, in discussing alternatives, the two groups explored the possibility of using both on and off-site meeting places. The possible locations discussed were Catholic University, Trinity College and Shaed Elementary School.

17. The tenant association considered both on and off-site meeting places. Specifically, depending on the function, the group's need for large or small space is different. The association is host to gatherings such as a Christmas bazaar and a fashion show. These events attract a large group of people and therefore a large room is needed. The association stated that the area surrounding the apartment complex is hilly and many of the association's programs are for small children. It would be difficult to have these activities off-site because of the area's steep topography. At night, the area around Shaed Elementary School is unsafe. The residents have a right to use the premises for meetings.

18. The Board reviewed the possibility of the tenant association using a vacant apartment unit. The applicants indicated that there are no existing vacant units at the complex. Potential tenants are placed on a five-year waiting list. The apartments that do become available are filled within a matter of days.

19. The founder of the Darrell Green Foundation indicated that, on occasion, the learning center has used the space at Shaed Elementary School for a custodial fee of \$50 per event. The applicants indicated that Horning Brothers would be willing to pay the fee for the tenant association to use the school's multi-purpose room four times per month.

20. The file contains a letter from the principal of Shaed Elementary School stating that its multi-purpose room is available for use by the Franklin Commons Tenant and Civic Association (Exhibit 36). The correspondence further states that the school's principal is working with Horning Brothers to finalize the request.

21. In the applicant's last submission to the Board (Exhibit 36), Horning Brothers states: "We will assume financial responsibility for the Franklin Commons Tenant and Civic Association use of the facilities at Shaed School to hold its meetings and special activities. We will gladly pay

the cost to Shaed School for the tenants to use the room two to three times monthly, and this agreement will continue until an on-site room is available to the tenant association.”

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The proposed facility would not adversely affect adjoining or nearby properties because of noise, traffic, number of students, or other objectionable conditions. The learning center would be located in the basement of a building. Access to the space would be primarily from the building’s rear. The residents of the apartment building would not be disturbed.
2. Two parking spaces are required for the learning center. Sufficient on-site parking spaces are available to accommodate the staff of the center.
3. The Franklin Commons Tenant and Civic Association was not opposed to the Darrell Green Youth Life Foundation being housed at the site. The tenant association wanted to share the community meeting space with the learning center.
4. All of the parties agreed that the learning center made a positive contribution to the Franklin Commons housing development. The center’s major drawback is it is not able to accommodate all of the request from parents who want to have their children attend.
5. The applicants made good faith efforts to first enroll children of Franklin Commons. Approximately 95 percent of the children reside in the apartment complex and five percent are from the neighborhood.
6. The applicants will be required to obtain the appropriate building permit prior to any construction. At such time, if there are fire code violations existing, the Department of Consumer and Regulatory Affairs will require corrective action.
7. Horning Brothers agreed to house the community organization off-site until the on-site space is remodeled/renovated and available.
8. Both groups provide a valuable service to the tenants of Franklin Commons. Some of the services overlap. However, on balance, the residents support both organizations and both should be accommodated on the site.

CONCLUSIONS OF LAW AND DECISION:

Based on the findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception under Section 206 of the Zoning Regulations to establish a learning center for 50 students and three staff and accessory office use in the basement of Building 119. The special exception must meet the criteria set forth in Section 3108 of the Zoning Regulations which requires that the application be in harmony with the general purpose

and intent of the Zoning Regulations and Map and not tend to adversely affect the use of neighboring property. In addition, the Board must find that the application complies with Section 206 of the Zoning Regulations.

The Board concludes that the learning center and the Franklin Commons housing complex are compatible uses. The special exception requested is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not have adverse effects on surrounding properties.

The Board concludes that the applicants have met the burden of proof, and as conditioned below, the proposed project will not cause objectionable impacts because of noise, traffic, parking and number of students.

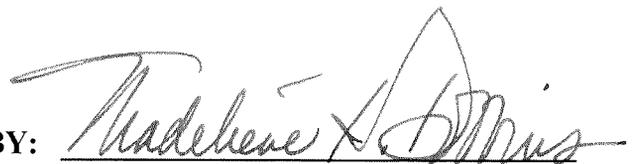
The Board accorded ANC 5C the "great weight" to which it is entitled. Accordingly, it is hereby **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of **TEN YEARS**.
2. Approval shall be for a maximum of 50 students and three staff.
3. As soon as possible, the applicant shall provide adequate space in the Franklin Commons complex for the tenant association to meet.
4. The applicant shall provide interim meeting space for the tenant association at a location agreeable to both parties until the on-site space is available.

VOTE: 4-0 (Betty King, Susan Morgan Hinton, Sheila Cross Reid and Maybelle Taylor Bennett to grant).

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

ATTESTED BY:



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: APR 16 1998

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 TWO YEARS 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.

ORD16267/BAB

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16267

As Director of the Board of Zoning, I certify and attest that on APR 16 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party in this application, and who is listed below:

Fred Greene
F. L. Greene, Associates L.L.C.
1411 K Street, N.W., Suite 503
Washington, D.C. 20005

Silas Young
Horning Brothers
1350 Connecticut Avenue, N.W., Suite 800
Washington, D. C. 20036

Darrell Green Youth Life Foundation
1713 Benning Road, N.E.
Washington, D.C. 20002

James D. Berry, Jr. Chairperson
Advisory Neighborhood Commission 5C
1723 3rd Street, NE
Washington, D.C. 20002

Gwendolyn Southerland, President
Franklin Commons Tenant and Civic Association
121 Franklin Street, N.E., Suite K-24
Washington, D.C. 20002

ATTESTED BY:

A handwritten signature in black ink, reading "Madeliene H. Dobbins", written over a horizontal line.

MADELIENE H. DOBBINS
Director

DATE: APR 16 1998