

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16344 of Patricia McDade, pursuant to 11 DCMR 3108.1, for a special exception under Subsection 205.1 to establish a child development center for 30 children, ages infant to 12 years and seven staff on the first floor of an existing structure in an R-5-A District at premises 554 Malcolm X Avenue, S.E. (Square 5985, Lot 813).

HEARING DATES: May 20, 1998 and July 22, 1998
DECISION DATE: July 22, 1998

ORDER

SUMMARY OF EVIDENCE:

1. The May 20, 1998 public hearing was postponed because the applicant did not post the property 15 days in advance of the public hearing, as required by Subsection 3317.4 of the Zoning Regulations. In addition, the Board asked the applicant to provide a site plan showing the subject building, back yard, and on-site play space. The Board asked staff to clarify issues concerning on-site parking.
2. The applicant indicated that she is the owner of a four-unit apartment building at the subject premises. She lives on the building's second floor and operates the day care center on the ground level. The applicant has operated the "Love and Care Child Development Center" from the site for the past 7 ½ years.
3. The applicant is proposing to increase the number of children at the child development center from 15 to 30. The applicant indicated that the reason for the increase is to allow for more infants while maintaining the existing complement of toddlers and preschoolers in the program.
4. The center would accommodate children between the ages of infant to 12 years old. A before-and-after school program would be offered at the center. Approximately 20 children would be enrolled in the center's all day program, and 10 would be enrolled in the before-and-after school program. Three persons are currently employed at the site; however, the applicant is proposing to increase the number to seven. The children are served breakfast, lunch and a snack. The center's hours and days of operation are 7:00 a.m. to 6:00 p.m., Monday through Friday. Trash would be picked up once per week. Two dumpsters are located in the rear of the building.
5. Infants would make up the majority of children using the expanded child care services. The applicant stated that there is a tremendous need in the community for infant care. An

opening between two apartments in the subject building would increase the center's floor area, thereby providing more space for the additional children.

6. The applicant indicated that the center is capable of meeting all applicable code and licensing requirements.

7. The applicant indicated that the premises are secure. Parents and visitors must be escorted into the building because the center's front door is always locked. Someone is always available to escort the children into the building when they are dropped off at curbside by their parents.

8. The applicant requested variance relief from the off-street parking requirement. Two 9 ft by 19 ft parking spaces are required for the child development center. The applicant indicated that there is plenty of on street parking in the vicinity of the site and that there is no parking restriction on the side of the street where the center is located, including in front of the building. The applicant indicated that parents who drive to the site park their vehicles on the surrounding streets. Some parents also park in front of the building. However, a majority of parents walk their children to the site.

9. On-site play space is located at the rear of the building. A 6-foot high chain link fence surrounds the 40-foot by 22-foot play space. Play times for the children are staggered. The smaller children play outside for approximately one-half to an hour, followed by the older children.

10. The applicant stated that another child development center is located within 1,000 feet of the site on Newcomb Street, SE. However, the Love and Care Child Development Center and close-by center would not have cumulative adverse impacts on the neighborhood.

11. The applicant submitted eight letters and a petition of support from parents and neighbors who use the child development center. Some of the comments made are as follows:

- I had a problem finding quality infant day care. The Love and Care Child Development center assisted me by providing quality care for my child. The care that the center provides responds to the physical, social, emotional, and intellectual growth of children.
- I am a mother of three children. I was a welfare recipient willing to work; however, I had no one to care for my baby. The Love and Care Child Development center assisted me by taking care of my child.
- The expanded day care center would definitely be an asset to the community. It seems as if a line is already forming for the new slots. We wish the day care provider well.
- Since there is a shortage of good day care centers in my community, I think this day care center should be able to expand. More children in my neighborhood would have an opportunity to attend. Love and Care Child Development Center has a lot to offer.

12. The applicant met with Advisory Neighborhood Commission (ANC) 8C on two occasions; however, the ANC did not take a position on the application. A written report was filed by the ANC.

13. By correspondence dated July 10, 1998, the District of Columbia Department of Human Services (DHS) stated that it supports the application. DHS stated that Love and Care Child Development Center has a Level 1 agreement with the DHS Child Care Subsidy Program. This center provides greatly needed quality infant care services to the community. With the increased demand for child care services, as a result of Welfare Reform and two-parent working households, the Department recommended approval of the applicant's request.

14. The Single Member District (SMD) Commissioner for ANC 8C03 testified in opposition to the application. The Commissioner indicated that he represented himself and constituents in the area surrounding the site. He did not have a signed statement from the people he represented.

15. The Commissioner's major concern was Malcolm X Avenue (formerly known as Portland Street) is a major thoroughfare that funnels traffic into Bolling Air Force Base and I-295. The thoroughfare, during the morning and evening rush hours, is highly congested with traffic. The roadway consists of four lanes, two in each direction. If a vehicle blocks one of the lanes, that causes a traffic backup. Other concerns were: Would there be adequate indoor facilities, to include flush toilets for children and staff; Lack of on-site parking; Inadequate pick-up and drop-off facilities; Inadequate on-site outdoor play space; Increased noise when the children are at play; The need for another nearby day care center; and, The need to provide quality service for the children.

FINDINGS OF FACT:

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

1. The applicant has used the site for the past 7½ years as a child development center. During that time, the center has operated in harmony with the neighborhood and has not adversely affected the use of neighboring properties.
2. The applicant would be providing a needed service for the neighborhood, based on letters of support from the Department of Human Services, parents of children enrolled in the center, and residents of the area.
3. The applicant meets all of the requirements of Section 205 of the Zoning Regulations, except for off-street parking (Subsection 205.4). The Board granted the applicant a waiver from the off-street parking requirement.
4. The Board finds that sufficient parking is available on Malcolm X Avenue and the other streets that surround the site. The Board finds that off-street parking is required only for teachers and other staff, not for parents.

5. The Board finds that the Order can be conditioned to prevent parents from parking in front of the building for long periods of time when dropping off and picking up children.

6. The Board finds that many of the Single Member District Commissioner's concerns would be addressed, prior to the applicant obtaining a license to increase the number of children at the center. For example, the applicant would be required to address at the regulatory stage of the process issues concerning adequacy of bathroom facilities, adequacy of the center's indoor space, and quality of care for the children. The applicant operates a licensed child development center for 15 children. Many of the regulatory concerns (including fire and building code requirements) are currently being met.

7. The Board finds that sufficient on-site play space is available to accommodate the children. The Board also finds that the children would be at play at staggered intervals throughout the day. Therefore, there should not be any objectionable impacts on nearby properties due to noise, play activities, or other objectionable impacts.

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 increase the size of an existing child development center from 15 to 30 children. The granting of such special exception relief requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the application will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

Advisory Neighborhood Commission 8C did not take a position on the application; therefore; the Board is unable to give "great weight" to the written report of the ANC. The Board is of the opinion that the issue raised by the Commissioner for ANC 8C03 concerning pick up and drop off of the children will be addressed in the conditions to this order. The other land use concerns discussed by the Commissioner would not negatively impact on the neighborhood. Most of the Commissioner's concerns would be addressed during the regulatory phase of the project's approval process.

The Board concludes that the applicant has met the burden of proof. The Board further concludes that the proposed increase of children at the child development center would be in harmony with the general purpose and intent of the zone plan and would not adversely affect the use of neighboring properties.

Based on the foregoing, the Board **ORDERS** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of **FIVE (5) YEARS**.
2. The number of children shall not exceed 30. The number of staff shall not exceed seven (7).

3. The ages of the children shall be infant through 12 years old.
4. The hours of operation shall be 7:00 a.m. to 6 p.m., Monday through Friday.
5. Two staff persons shall be posted in front of the building to escort the children into and out of the center.
6. The center shall provide adequate trash pick-up to avoid adverse impact on the neighborhood.

VOTE: 3-0 (Betty King, Sheila Cross Reid and John G. Parsons to grant.)

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

ATTESTED BY: 
SHERI M. PRUITT-WILLIAMS
Interim Director

SEP - 9 1998

FINAL DATE OF ORDER: _____

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, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ORD16344/8-31-98/BAB

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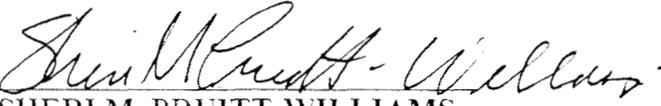
BZA APPLICATION NO. 16344

As Interim Director of the Board of Zoning Adjustment, I hereby certify and attest that on AUG 9 1998 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Patricia A. McDade
554 Malcolm X Avenue, S.E.
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R. Calvin Lockridge
121 Raleigh Street, S.W.
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William C. Lewis, Chairperson
Advisory Neighborhood Commission 8C
3125 M.L.K Ave., S.E.
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ATTESTED BY: 
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: AUG 9 1998