

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17896 of Washington Ethical Society, pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (40 children and 14 staff) under section 205, in the R-1-B district at premises 7750 16th Street, N.W. (Square 2745F, Lot 81).

HEARING DATE: Tuesday, March 17, 2009

DECISION DATE: Tuesday, March 17, 2009

DECISION AND ORDER

This self-certified application was filed on October 3, 2008 by the Washington Ethical Society (“WES”), the owner of the property that is the subject of this application, together with Wonders Child Care Center, the entity that will operate the proposed child development center (collectively, the “Applicant”). As finally amended, the application requested a special exception under § 205 of the Zoning Regulations (Title 11 DCMR) to establish a child development center for 40 children and 14 staff. Following a public hearing, the Board voted on March 17, 2009 to approve this application subject to the conditions listed herein.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated October 7, 2008, the Office of Zoning provided notice of the application to the Office of Planning, the District Department of Transportation; the Office of the State Superintendent of Education; the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4A, the ANC within which the subject property is located; and Single Member District/ANC 4A02. Pursuant to 11 DCMR § 3113.13, on January 6, 2009, the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 4A, and owners of property within 200 feet of the subject property. Notice of the hearing date, March 17, 2009, was published in the *D.C. Register* on January 9, 2009 (56 DCR 261).

Party Status. In addition to the Applicant, ANC 4A was automatically a party in this proceeding. At the public hearing, the Board granted a request for party status in opposition to the application from Ethel J. Hackney, a neighbor residing near the subject property.

Applicant’s Case. The Applicant described plans to use a portion of the two-story building on the subject property as a child development center for 40 children. According to the Applicant,

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the proposed child development center would not create any adverse impacts, in part because the Applicant had agreed to comply with a “neighborhood cooperation agreement” negotiated with several members of ANC 4A and residents living near the subject property. The Applicant also asserted that traffic patterns for student drop-offs and pick-ups will be efficiently arranged so that neighbors will not be inconvenienced. The Applicant’s traffic expert testified that there is adequate capacity along the local area roadways and intersections to accommodate the moderate increase in traffic that will be generated by the child development center.

Government Reports. By memorandum dated March 10, 2009, the Office of Planning (“OP”) recommended approval of the application subject to several conditions pertaining to the maximum number of children and employees at the child development center, its hours of operation, and drop-off and pick-up procedures. OP did not anticipate any adverse impacts on the neighborhood as a result of the child development center but recommended approval of the requested special exception subject to conditions similar to those adopted by the Board for another child development center previously located at the subject property “to mitigate concerns of abutting neighbors.”

By memorandum dated March 5, 2009, the District Department of Transportation (“DDOT”) stated its conditional approval of the application, noting that the child development center might increase traffic demand on local neighborhood streets adjacent to its entrance and recommending that the Board require the Applicant to implement a transportation management plan to ensure proper site circulation and the safest means for children to access the location. DDOT expressed support for the circulation plan contained in the neighborhood cooperation agreement, which would preclude use of the alleys by the Applicant and visitors to the child development center.

By memorandum dated November 14, 2008, the Office of the State Superintendent of Education, Early Childhood Education, Child and Residential Care Facilities Division recommended approval of the application. According to the Office of the State Superintendent of Education, the proposed child development center “would greatly benefit the City’s growing demand for licensed child care facilities.”

ANC Report. By letter dated March 9, 2009, ANC 4A indicated that, at a regularly scheduled and properly noticed meeting on March 3, 2009, with a quorum present, the ANC voted 7 to 1 to recommend approval of the requested special exception contingent upon the signing of a neighborhood cooperation agreement between the Applicant, nearby neighbors, and the appropriate 4A commissioners. ANC 4A based its recommendations in part on its findings that “issues concerning the overall increase to traffic have been addressed” and that the Applicant’s agreement with neighbors will provide “opportunities to address issues that may occur.”

Party in Opposition to the Application. Ethel J. Hackney opposed approval of the requested special exception on the grounds that: (a) there is little or ineffective recourse to enforce the Applicant’s traffic and parking management plan; (b) other programs at the subject property have resulted in undue parking congestion on 16th Street; (c) the child development center might

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serve primarily out-of-town students, not District students; and (d) it is unreasonable to expect a witness of an alleged parking violation to record the alleged violation on camera, as prescribed in the Applicant's neighborhood cooperation agreement.

Persons in Support of the Application. The Board received letters and signed petition statements from several persons in support of the application, who described a need for child care in the neighborhood and stated that the Applicant's proposed child development center would not create objectionable impacts.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 7750 16th Street, N.W. (Square 2745F, Lot 81).
2. The lot is rectangular, 127.28 feet wide and 150 feet long, and has an area of 19,092 square feet. The property slopes downward from Sixteenth Street to the rear of the lot.
3. The rear of the lot abuts a public alley, 16 feet wide, that runs north-south between Kalmia and Jonquil Streets.
4. The subject property provides 13 off-street parking spaces, which are accessible via the alley.
5. The property is improved with a two-story building constructed in 1966 as a church. The building will continue to be used primarily for church functions.
6. A child development center was operated at the subject property from 2000 to 2003. (*See* BZA Order 16590, issued July 24, 2000). The subject property was used as a high school from 1968 to 2000 for up to 40 children. The location hosted a summer day camp from 2003 to 2007.
7. The surrounding properties mostly contain one-family dwellings. The Lowell School, a child development center and private school, is located at 1640 Kalmia Road, in the same square as and within 1,000 feet of the subject property.

Applicant's Proposal

8. The Applicant proposes to use 2,275 square feet of the bottom floor of the two-story church building as a child development center for up to 40 children, ages one-and-half to five years, and 14 staff. The entrance to the child development center will be located adjacent to the alley, at ground level.

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9. The hours of operation of the child development center will be 7:00 a.m. to 6:30 p.m., Monday through Friday.
10. The child development center will use an outdoor play area located in the rear yard of the subject property, more than 10 feet away from the closest residence. The play area is fenced and landscaped in a manner that reduces its visibility to and from abutting properties. The Applicant does not propose to use any off-site play area.
11. Although the outdoor play area is large enough to accommodate all 40 children at once, typically each class has its own outdoor play time, and therefore a maximum of 17 children (i.e. the largest class size) would likely use the outdoor play area at any one time.
12. The Applicant proposed to implement a transportation management plan (“TMP”) as part of its neighborhood cooperation agreement, which will be effective for a term of three years. The plan addresses matters relating to traffic routes, parking, and procedures for the drop-off and pick-up of children, and lists sanctions for noncompliance. Pursuant to the transportation management plan, the Applicant will implement certain requirements applicable to drivers coming to the child development center so as to minimize the potential for creating any adverse traffic or parking impacts. The requirements include prohibitions disallowing parents and caregivers from:
 - a. Driving through or into any of the 16th Street alleys to pick up or drop off students (except in the case of a physically disabled student, and then subject to certain conditions), or to attend meetings with staff members at the child development center;
 - b. Using any driveways to execute a three-point turn near the subject property;
 - c. Parking on Jonquil Street N.W. on either side of 16th Street N.W., or within five feet of the entrance of any garage or driveway in the community. Drivers will be encouraged to seek a parking space first on Kalmia Road west of 16th Street, then on Kalmia Road east of 16th Street, and, if more spaces are available at either location, park on 16th Street if permitted by applicable parking restrictions; and
 - d. Using a vehicle to transport a student to or from the subject property that does not display a placard provided by the child development center.
13. The Applicant will include the above restrictions into its enrollment agreement with parents or guardians of students enrolled in the child development center as well as the family handbook, which it distributes to parents.
14. For at least 30 minutes during the morning and evening peak pick-up and drop-off periods, which the Applicant expects will be 8:15 a.m. to 8:45 a.m. and 5:15 p.m. to 5:45 p.m., the child development center will post at least one member of its staff at the entrance to the alley

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at Kalmia Road and 16th Street to direct drivers to park on Kalmia and walk students to the entrance of the center.

15. Employees of the child development center will monitor the parking area at the subject property during peak morning and afternoon activity, and randomly at other times, to assure that drivers comply with the neighborhood cooperation agreement.
16. Employees of the child development center will park in the parking lot at the subject property, where at least four parking spaces will be reserved for their use. Staff drivers will enter on Jonquil Street and exit at Kalmia Road.
17. The child development center will offer its staff an employee benefit to encourage the use of public transportation.
18. The Applicant's facility is capable of meeting all applicable code and licensing requirements.

Harmony with Zone Plan

19. The Board credits the testimony of the Office of Planning that approval of the requested special exception would not adversely affect the use of the neighboring property because similar uses have been regularly accommodated at the subject property in the past and because the child development center would be located indoors within a brick building that would mitigate any sounds generated by the children.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under 11 DCMR § 205 to establish a child development center with a maximum enrollment of 40 children and 14 staff. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to grant special exceptions, as provided in the Zoning Regulations. Subsection 3104.1 of those regulations generally authorizes the Board to grant a special exception if the use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of the neighboring property, subject to specific conditions.

The specific conditions applicable to the grant of a special exception for a child development center in the R-1-B zone district are set forth in § 205. The provisions of that section require that (a) the child development center must be capable of meeting all applicable code and licensing requirements (§ 205.2); (b) the child development center must be located and designed to create no objectionable traffic conditions and no unsafe conditions for picking up and dropping off persons in attendance (§ 205.3); (c) the child development center must provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors (§ 205.4); (d) the child development center, including any outdoor play space provided, must be located and designed so that there will be no objectionable impacts on adjacent or nearby

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properties due to noise, activity, visual, or other objectionable conditions (§ 205.5); and (e) any off-site play area must 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 (§ 205.7). The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements deemed necessary to protect adjacent and nearby properties. 11 DCMR § 205.6. The Board may approve more than one child or elderly development center or adult day treatment facility in a square or within 1,000 feet of another such facility only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors. 11 DCMR § 205.8.

Based on the findings of fact and for the reasons discussed below, the Board finds that the Applicant has met its burden in proving that the proposed child development center at the subject property will satisfy the provisions of § 205. The Board further concludes that, the conditions adopted in this order will minimize any potential adverse impacts; and that operation of the proposed child development center will not tend to adversely affect the use of any neighboring property.

The Board finds that the proposed child development center will be located and designed to create no objectionable traffic conditions and no unsafe conditions for picking up and dropping off persons in attendance. The center will be located in a building that has previously housed a child development center as well as a high school and summer camp. Consistent with the neighborhood cooperation agreement, the child development center will implement a detailed traffic and parking management plan that establishes procedures for the drop-off and pick-up of children at the center, subject to monitoring and enforcement by the center's staff. The Board has imposed a condition identifying procedures that must be in the final plan. Enrollment will be limited to 40 children, and their arrival and departure times will be staggered both in the morning and in the evening.

The child development center will provide sufficient off-street parking, as four of the 13 spaces on the subject property will be reserved for use by the center's staff, who will also be offered a financial incentive to use public transportation. As part of its traffic management plan, the center will disseminate information to parents concerning appropriate on-street parking locations in the vicinity, and its staff will monitor vehicles coming to the subject property to ensure that drivers will not block the alley or neighbors' driveways. The Board credits the testimony of the Applicant's traffic expert that ample street parking is available in the vicinity of the subject property.

The Board concludes that the location and design of the child development center's outdoor play area will not create any objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. The outdoor play space will be amply screened to reduce its visibility and will be located more than 10 feet away from the adjacent residence to mitigate any noise impact from supervised play on the tot lot. In addition, employees of the child development center will manage the outdoor play space in a manner

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which will avoid any objectionable condition, noting that the center will typically limit use of the play area to one class at a time.

The Board notes that another child development center is located within 1,000 feet of the subject property. However, the Board does not find that the cumulative effect of the facilities will have an adverse impact from noise, traffic, or other similar factors, in part because the other child development center is located on a different street from the Applicant's property.

The Board is required to give "great weight" to the issues and concerns of the affected Advisory Neighborhood Commission and to the recommendations of the Office of Planning. By a letter dated March 3, 2009, ANC 4A recommended approval of the application contingent upon the signing of a neighborhood cooperation agreement between WES, nearby neighbors, and the appropriate 4A commissioners, which subsequently occurred. By a memorandum dated March 10, 2009, OP recommended approval of the application with conditions, which are addressed in this Order.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and ANC 4A, the Board concludes that the Applicant has satisfied the requirements for a special exception under § 205 to establish a child development center for 40 children and 14 staff in the R-1-B district at 7750 16th Street, N.W. (Square 2745F, Lot 81). Accordingly, it is therefore **ORDERED** that this application is **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. This approval shall be valid for a period of three years from the effective date of this Order.
2. The child development center shall have enrollment of no more than 40 students ages one and a half to five years old.
3. The child development center's staff shall be limited to no more than 14 persons.
4. Hours of operation of the child development center shall be limited to 7:00 a.m. to 6:30 p.m., Monday through Friday.
5. The Applicant shall implement a traffic and parking management plan consistent with the provisions delineated in Findings of Fact No. 12 through 16.
6. The Applicant and any future operator of the center shall include restrictions consistent with those stated in Finding of Fact No. 12 in its enrollment agreement with parents or guardians of students enrolled in the child development center as well as the family handbook, which it distributes to parents.

7. Except in case of an emergency, the Applicant shall provide at least one week notice to neighbors regarding special events at the child development center.

VOTE: 4-0-1 (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Anthony J. Hood voting to approve; Mary Oates Walker not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

ATTESTED BY:



RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: MAY 20 2009

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on MAY 20 2009, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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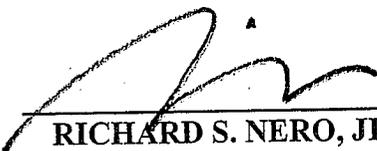
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