

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17942 of Asian American LEAD, pursuant to 11 DCMR § 3104.1, for a special exception to allow the continued operation of a community center under § 209 in the R-4 district at premises 1323 Girard Street, N.W. (Square 2855, Lot 828).

HEARING DATE: July 14, 2009
DECISION DATE: July 28, 2009

DECISION AND ORDER

This application was submitted March 2, 2009 by Asian American LEAD (“Applicant”), the owner of the property that is the subject of the application. The self-certified application was filed pursuant to 11 DCMR § 3104.1 for a special exception under § 209 to continue operation as a community center in the R-4 district at 1323 Girard Street, N.W. (Square 2855, Lot 828). Following a public hearing, the Board voted 3-0-2 on July 28, 2009 to grant the application subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated March 6, 2009, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1B, the ANC for the area within which the subject property is located; and the single-member district ANC 1B08.

A public hearing was scheduled for July 14, 2009. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on April 24, 2009 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 1B. Notice was published in the D.C. Register on May 1, 2009 (56 DCR 3480).

Requests for Party Status. In addition to the Applicant, ANC 1B was automatically a party in this proceeding. The Board granted a request for party status in opposition to the application from Dorothy Brizill and Gary Imhoff, who live in the residence immediately abutting the subject property to the west.

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BZA APPLICATION NO. 17942
PAGE NO. 2

Applicant's Case. The Applicant presented evidence and testimony from Rosetta Lai, executive director of AA LEAD; Ellen McCarthy, an expert in planning and zoning; and Kendra Lee, the Applicant's program director. The Applicant described its activities at the community center and asserted that the application should be granted because the center has been operating for the past five years without causing any adverse impacts on neighboring property due to noise, traffic, parking, or other objectionable conditions.

Government Reports. By report dated July 7, 2009 and through testimony at the public hearing, the Office of Planning recommended approval of a special exception to continue the existing community center use for five additional years, subject to conditions requiring the Applicant to stripe the required on-site parking spaces in accordance with the Zoning Regulations, and to place in the record an updated agreement allowing the Applicant to use two parking spaces in the parking lot of the Easter Seals child development center, which is located immediately east of the subject property. According to OP, the application satisfied the requirements of § 209.

ANC Report. By letter dated July 6, 2009, ANC 1B indicated that, at a public meeting on July 2, 2009 with a quorum present, the ANC voted 7-0 to support the Applicant's request for a five-year extension of its special exception. The letter stated that ANC 1B had "received extensive oral and written testimony from the applicant ... and neighboring residents," leading to the ANC's conclusion that "the applicant has been an asset to the neighborhood and is performing an important public service of benefit to the residents of ANC 1B."

Party in opposition. The party in opposition stated that they did not oppose approval of the application. However, the party expressed concern about the lack of an exterior egress from the building, which the Applicant had proposed to construct as part of its application for a special exception in 2004, and complained about students congregating on the front porch of the community center as well as playing in the abutting street and sidewalk, noise and accumulations of trash associated with unsupervised gatherings of students outside the building, and the Applicant's staff members driving in the rear yard of the party's residence while exiting the parking area on the subject property.

Persons in support. The Board received a number of letters and a petition in support of the application, which commented favorably on the services provided by the Applicant.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is a rectangular parcel located on the north side of Girard Street between 13th and 14th Streets, N.W. at 1323 Girard Street, N.W. (Square 2855, Lot 828). The lot is 40 feet wide and approximately 150 feet deep, with a lot area of 6,000 square feet.

BZA APPLICATION NO. 17942

PAGE NO. 3

2. The subject property is improved with a three-story plus basement detached brick building. The building is located close to the property line to the west; on the east, a driveway provides access from the street to a paved parking area at the rear of the building.
3. A public alley abuts the subject property along the rear lot line, although vehicular access to the alley is unavailable due to a difference in elevation between the alley and the lot. The rear yard of the subject property is bounded by a wooden fence approximately six feet high.
4. The subject property is located approximately three blocks from the Columbia Heights Metrorail station.
5. Before its acquisition by the Applicant in 2002, the subject property was owned by Sojourners, which had a certificate of occupancy to use the property as a church.
6. The abutting property to the east is occupied by the Easter Seals child development center, which operates from 7:00 a.m. until 6:00 p.m., Monday through Friday. The Easter Seals property contains a parking lot immediately abutting the subject property.
7. Properties in the vicinity of the subject property are generally improved with one-family and multi-family row dwellings to the north across the alley, one-family row dwellings to the south across Girard Street, and one-family detached dwellings to the west. The surrounding neighborhood is characterized by predominantly moderate-density residential development.

The Applicant's Project

8. The Applicant is a § 501(c)(3) non-profit organization founded in 1998, whose mission is to help low-income Asian-American youth and families in the Washington area through education, leadership development, and community building.
9. The Applicant proposed to continue to use the subject property as a community center for Asian-American youth and families in the Columbia Heights, Mount Pleasant, and Chinatown neighborhoods. In 2004, the Applicant was authorized to establish the community center by special exception valid for a term of five years (*see* Application No. 17080; order issued March 5, 2004). The Applicant did not propose any changes to the current community center use, or to the improvements on the property.
10. The Applicant offers after-school academic enrichment and tutoring for students in kindergarten through 12th grade, a mentoring program, and a family strengthening program. The community center is used primarily for the Applicant's program for secondary school students, ages 14 through 18, and for staff offices. Other programs are conducted off-site at various locations.

BZA APPLICATION NO. 17942
PAGE NO. 4

11. The number of students at the community center on average ranges from 10 to 30 per day, and does not exceed 60. Most students arrive at the center on foot or via public transportation.
12. The hours of operation of the community center are 10:00 a.m. to 7:00 p.m., Monday through Friday. The Applicant also uses the subject property occasionally in the evening or on weekends to host board and staff meetings, special events, and training.
13. The community center has a staff of 11, whose offices are on the second and third floors of the community center. The staff supervise the activities at the community center, indoors and outside, during program hours.
14. The majority of the center's program activities take place inside the building. The use of the outside grounds is limited to a few annual events, such as a volunteer appreciation day for the Applicant's volunteers and guests.
15. The first floor of the building houses a main gathering space for student activities, as well as a kitchen; the second floor houses a computer lab and staff offices; the third floor is used exclusively for staff offices. The basement is used for storage.
16. No commercial sales are conducted at the subject property.
17. The subject property contains five parking spaces. The Applicant currently has an agreement with the Easter Seals child development center that makes two parking spaces in the Easter Seals parking lot available for the Applicant's use.

Zone Plan

18. The subject property is located in the R-4 zone district, which "is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families." 11 DCMR § 330.1.

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks the renewal of a special exception under § 209 to allow the continued operation, for another five-year term, of a community center in the R-4 district at 1323 Girard Street, N.W. (Square 2855, Lot 828). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to grant a special exception as provided in the Zoning Regulations where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to

BZA APPLICATION NO. 17942
PAGE NO. 5

affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific provisions. 11 DCMR § 3104.1. In accordance with the Zoning Regulations, use as a community center may be permitted by special exception in the R-4 District provided that the center is organized not for profit but for the promotion of the social welfare of the neighborhood where the center is located, the center does not offer articles of commerce for sale and is not likely to become objectionable because of noise or traffic, and the use of the community center is reasonably necessary or convenient to the neighborhood where it is located. 11 DCMR § 209.

The Board concludes that the Applicant has satisfied the requirements of the Zoning Regulations and that the application should be granted, subject to certain conditions intended to ensure that the use of the subject property as a community center will not tend to create adverse impacts on the use of neighboring property. The Board was not persuaded that the community center use is creating objectionable conditions in its current operation that would require denial of the application, but adopts conditions in this order to address concerns expressed by the party in opposition about the upkeep of the subject property as well as noise potentially caused by students outside the community center, and to ensure that no objectionable conditions are likely to result from the community center use in the future.¹

The Board concludes that the community center use will not tend to create objectionable conditions due to noise, in light of the relatively small number of students in attendance daily, the center's hours of operation, the types of activities offered at the community center, and the supervision of those activities by the center's staff. In addition, most of the center's programs

¹ The Board was not persuaded by the party in opposition's contention that the Applicant had failed to comply with the 2004 order that initially authorized the community center use by failing to construct an exterior staircase originally planned for the building. Findings of fact in the 2004 order reflected the testimony by the Applicant in that proceeding regarding certain improvements to the building that were planned at that time, but the Applicant testified in this proceeding that not all the planned improvements had been made due to budget constraints. The 2004 order granted the requested special exception subject to a five-year term but the approval was not otherwise conditioned; the findings of fact cited by the party in opposition described the Applicant's then plans but did not create a condition of approval of the special exception adopted by the Board. The party in opposition did not allege in this proceeding that the Applicant's decision not to build the exterior staircase was inconsistent with any provision in § 209 or any other zoning regulation.

The Board's discretion in reviewing an application for a special exception to establish or continue operation of a community center use is limited to a determination of whether an applicant has complied with the requirements of §§ 209 and 3104.1 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981). The scope of the Board's authority is defined by statute. See D.C. Official Code § 6-641.07 (2001). Where permitted by the Zoning Regulations, the Board may grant a special exception "subject to appropriate principles, standards, rules, conditions, and safeguards *set forth in the regulations*." D.C. Official Code § 6-641.07(d) (emphasis added). Even if the party in opposition had presented evidence of noncompliance with the prior order, the Board lacks the legal authority to deny an application for a special exception solely on the ground that the applicant had failed to comply with provisions of a prior grant of zoning approval. By statute, the authority to enforce the Zoning Regulations, including compliance with special exceptions granted by the Board, rests in the Mayor. D.C. Official Code § 6-641.10 (2001).

BZA APPLICATION NO. 17942
PAGE NO. 6

occur inside the building. The Board also concludes that the community center use will not tend to create objectionable conditions due to traffic. The subject property is well served by public transportation, and most students attending the center arrive by public transportation or on foot, since the use of the community center is reasonably necessary and convenient to its neighborhood. The community center therefore does not generate a substantial amount of traffic or demand for parking. The Applicant can provide at least five parking spaces on site, and has the use of two additional spaces in the neighboring lot, to serve the 11 employees and any visitors who drive to the community center.²

The Board is required to give “great weight” to the recommendation of the Office of Planning and to any issues and concerns raised by ANC 1B in this proceeding. The Board notes that both OP and the ANC were in support of this application. The Office of Planning recommended two conditions, both related to parking; the Board agrees that the Applicant should be required to stripe the parking spaces available on the subject property in accordance with the Zoning Regulations, and notes that the record includes an updated agreement allowing the Applicant to use two parking spaces in the parking lot of the Easter Seals child development center. ANC 1B did not indicate any issues or concerns about the Applicant’s community center use in its resolution recommending approval of the Applicant’s request for a five-year extension of the special exception.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the written report of ANC 1B, the Board concludes that the Applicant has satisfied the requirements for renewal of a special exception under § 209 to allow the continued operation, for another five-year term, of a community center in the R-4 district at 1323 Girard Street, N.W. (Square 2855, Lot 828). Accordingly, it is hereby **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS**:

1. The special exception shall be valid for a term of five years from the effective date of this Order.
2. The normal hours of operation of the community center shall not exceed 10:00 a.m. to 7:00 p.m., Monday through Friday.
3. Except for occasional special events, the number of persons in attendance at the community center shall not exceed 11 staff and 60 participants.
4. The Applicant shall conduct programs and activities associated with the community center primarily inside the building.
5. The Applicant shall provide five parking spaces on the subject property, and shall maintain the spaces in accordance with the requirements of chapter 21 of the Zoning

² The Board notes that, since a new fence has been erected around the rear yard of the subject property, vehicles will not be able to drive onto the adjoining neighbors’ rear yard.

Regulations, including with respect to the size of the spaces, maintenance of the parking area, and access to the parking area.

6. The Applicant shall place a trash receptacle on the front porch of the subject property, and shall empty the trash daily.
7. The Applicant shall designate a member of the staff of the community center as the person responsible for addressing complaints and concerns raised by the public or Advisory Neighborhood Commission 1B.
8. The Applicant shall attend at least one public meeting of Advisory Neighborhood Commission 1B each year to provide an opportunity for the public to express concerns related to the operation of the community center, and to describe how the Applicant addressed any complaints received from the public during the prior year.

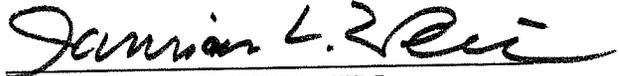
VOTE: 3-0-2

(Marc D. Loud, Shane L. Dettman, and Konrad W. Schlater (by absentee vote) voting to APPROVE; two Board members not participating)

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

A majority of Board members approved the issuance of this Order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: OCT 26 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.

BZA APPLICATION NO. 17942
PAGE NO. 8

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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GOVERNMENT OF THE DISTRICT OF COLUMBIA
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BZA APPLICATION NO. 17942

As Director of the Office of Zoning, I hereby certify and attest that on **OCTOBER 26, 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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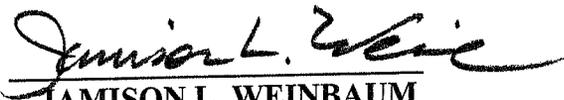
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BZA APPLICATION NO. 17942
PAGE NO. 2

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