

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17987 of El Jardin Infantil**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (12 children, 2 staff) under § 205, in the R-1-B District, at premises 2108 48th Street, N.W. (Square 1390, Lot 825).

**HEARING DATES:** November 10, 2009, March 9, 2010, May 4, 2010, June 22, 2010, and July 13, 2010

**DECISION DATE:** July 13, 2010

**DISMISSAL ORDER**

On July 26, 2009, Ms. Ana Maria Fernandez (“Applicant”) filed Application No. 17987 seeking a special exception to allow a child development center in her home, at 2108 48<sup>th</sup> Street, N.W. (“subject property”). The Office of Zoning (“OZ”) scheduled a hearing on the application for November 10, 2009, and pursuant to 11 DCMR § 3113.13, sent out proper notice of the hearing.

On November 2, 2009, OZ received a letter from the Applicant requesting a continuance of the hearing due to her ill health and her consequent inability to operate a child development center at that time. In her letter, she requested that her hearing be continued to “sometime in the spring” of 2010. (Exhibit 23.)

Per the Applicant’s request, the Board of Zoning Adjustment (“Board”) re-scheduled the hearing on this application to March 9, 2010. On March 9<sup>th</sup>, however, the Applicant did not appear at the hearing, so the Board again re-scheduled the hearing, this time to May 4, 2010. During the March 9<sup>th</sup> proceedings, the Board explained on the record, for the benefit of the Applicant, that a significant amount of important information concerning the operation of the proposed child development center was absent from the record. The Board pointed out the specific information required of the Applicant, noted that the Office of Planning could not make a recommendation to the Board until this information was provided (Exhibit 25), and further noted that the Applicant should arrange to present her project to Advisory Neighborhood Commission (“ANC”) 3D, the ANC within which the subject property is located.<sup>1</sup>

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<sup>1</sup>At that time, *i.e.*, on March 9, 2010, there was an earlier ANC letter in the file dated October 22, 2009 (Exhibit 22), but it had no substantive information in it, as it was merely a request to continue the hearing from the originally-scheduled date of November 10, 2009.

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On May 4, 2010, the Applicant appeared before the Board and explained that after beginning to operate her child development home in September, 2006, she found out, in October, 2006, that she had colon cancer. The child development home operated for three years, and in July, 2009, the Applicant filed this application with the Board to expand her operation to a child development center. At about that time, the Applicant learned that her cancer had metastasized, which hindered her in processing her application before the Board.

As of May 4, 2010, however, there was still very little information in the file, and OP was still unable to make a recommendation to the Board. During the colloquy among the Board, the OP representative, and the Applicant, the OP representative also emphasized that OP desired the input of the District Department of Transportation (“DDOT”) on this application, particularly with respect to the procedures proposed to be used for the drop-off and pick-up of children. The Board Chair also again recommended to the Applicant that she arrange to present her project to ANC 3D, and, it was pointed out to the Applicant that the subject property had not yet been properly posted as required by 11 DCMR § 3113.14. The Applicant agreed to meet with the OP representative on that date – May 4<sup>th</sup> – and OP was then to contact DDOT and finally file its recommendation with the Board. After working with the Applicant and OP to set deadlines for submissions, the Board again continued the hearing to June 22, 2010.

On June 22, 2010, the Applicant appeared at the hearing, and there was an OP report in the file recommending approval of the application (Exhibit 27), but, as of that date, the subject property had only been posted for one day, not the 15 days required by the regulation. The Applicant explained that she recently had back surgery and had forgotten to post the property. Further, on June 22<sup>nd</sup>, there was no substantive ANC submission in the file, although the Applicant stated that she had appeared at an ANC meeting earlier in June and had requested that the ANC e-mail its report to the Board. Attempting to work with the Applicant, the Board instructed her to leave the posting in place, but to change the date to the new, continued hearing date of July 13, 2010, and to have the ANC letter into the file by July 8, 2010.

On June 30, 2010, the report from ANC 3D recommending approval of the application was received into the file. (Exhibit 30.)

On July 13, 2010, the Board again called the case for a public hearing, but the Applicant was not present, nor had she informed the Board that she would not be present. She had, earlier that day, filed an Affidavit of Posting into the record, albeit late, and had been present in the hearing room, but left before her case was called.

After ascertaining, on July 13, 2010, that the Applicant had left without informing the Board, and based on the many continuances granted to the Applicant, as well as the repeated requests for proper posting and necessary information, the Board decided to dismiss the application pursuant to 11 DCMR § 3100.6. The Board was explicit, however, that it would view favorably any request from the Applicant to re-submit her application prior to the 90-day period mandated by

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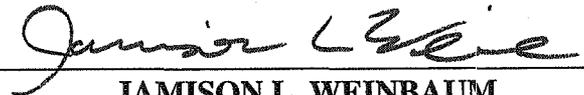
11 DCMR§ 3113.11. The Board voted 4-0-1 to dismiss the application without prejudice to its re-filing.

Based on all the proceedings in this case, as summarily laid out above, it is hereby **ORDERED** that this application for a special exception for a child development center is **DISMISSED**.

**VOTE:**        **4-0-1**        (Meridith H. Moldenhauer, Nicole C. Sorg, Shane L. Dettman,  
and Anthony J. Hood to dismiss; No other Board member  
(vacant) 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:**   **JAN 13 2011**  

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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**BZA APPLICATION NO. 17987**

As Director of the Office of Zoning, I hereby certify and attest that on **JAN 13 2011**, 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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ATTESTED BY:

  
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