

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18052 of Freeda's Child Development Center, pursuant to 11 DCMR § 3104.1, for a special exception for a child development center (24 children and 6 staff)¹ under § 205, in the R-1-B District at premises 3217 Alabama Avenue, S.E. (Square 5677, Lot 804).

HEARING DATES: April 13, 2010 and April 20, 2010
DECISION DATE: May 4, 2010

DECISION AND ORDER

This application was submitted on January 26, 2010, by Alfreda Wright-Brown ("Applicant"), the owner of the property that is the subject of the application ("subject property"). The Applicant currently operates a child development home at the subject property and proposes to enlarge the use to a child development center. She applied to the Department of Consumer and Regulatory Affairs ("DCRA") for a certificate of occupancy for the child development center ("CDC") use and was directed to request zoning relief from the Board of Zoning Adjustment ("Board"), hence the filing of this application.

The Board scheduled a hearing on the application on April 13, 2010, which was continued to, and completed on, April 20, 2010. A decision date was set for May 4, 2010, on which date the Board voted 3-0-2 to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated January 28, 2010, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Departments of Transportation ("DDOT") and Health ("DOH"), Advisory Neighborhood Commission ("ANC") 7B, the ANC within which the subject property is located, Single Member District 7B05, and the Councilmember for Ward 7. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing on the application in the *D.C. Register*, and on February 12, 2010, sent such notice to the Applicant, ANC 7B and all owners of property within 200 feet of the subject property.

¹The application was originally advertised to request 10 staff members, but the Applicant amended the application to request 6 staff.

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Request for Party Status. ANC 7B was automatically a party to this application, and appeared in opposition. There were no requests for party status.

Applicant's Case. The Applicant's representative and her daughter who lives at the subject property, presented the Applicant's case. They both testified to the current and proposed uses and as to how the proposed CDC meets the requirements of 11 DCMR § 205.

Government Reports. OP filed a report dated April 13, 2010, in support of the application, and recommended three conditions: a term of five years, provision of three on-site parking spaces, and no pick-up or drop-off on Alabama Avenue, with the parents of children attending the CDC so informed by the Applicant. (Exhibit No. 25).

DDOT filed a report dated April 19, 2010, conditionally supporting the application. The DDOT report emphasized the danger in crossing Alabama Avenue in the vicinity of the subject property, due to the large volume of traffic and the absence of a traffic signal. The report urged the Board to stipulate that parents park only on nearby 32nd and 33rd Streets when dropping off or picking up children, or, in the alternative, that a CDC staff member be stationed at the intersection of 33rd Street and Alabama Avenue to help escort children. The DDOT report also noted that the addition of the CDC's employees' vehicles to the neighborhood will have "little ... impact on the curbside inventory in Hillcrest." (Exhibit No. 28).

The D.C. Office of the State Superintendent of Education ("OSSE") filed a memorandum dated March 3, 2010 supporting the approval of the special exception request. (Exhibit No. 21).

ANC Report. ANC 7B filed a detailed, 22-page submission in opposition to the application, which included, among other things, a background statement, the text of the ANC motion against the application, the text of several e-mails concerning the application, a discussion of each provision of 11 DCMR § 205, and how, in the ANC's opinion, the application falls short, and a tally sheet summarizing the results of a questionnaire the ANC submitted to "impacted" residents concerning the requested CDC use at the subject property. (Exhibit No. 31; *See also*, Exhibit No. 37).

In its submissions, the ANC sets forth several areas of concern. The ANC opines that the CDC facility will not be able to provide sufficient parking and that children cannot be safely picked up or dropped off on Alabama Avenue. Further, the ANC states that nearby 32nd and 33rd Streets are not viable alternatives for drop-off/pick-up or parking associated with the CDC because they are short, narrow streets already parked on by residents. The ANC also expressed concerns with congestion in the alley behind the subject property, sanitation at the CDC, the adequacy of the yard if it is to serve as an outdoor play space for the children, and the possible inability of the CDC to use the playground at the Hillcrest Recreation Center as an off-site play area. The ANC submission also appeared to take exception to the fact that the Applicant will not live at the subject property and portrayed her as an interloper with no real interest in the community. The ANC was also against any "zoning change" or precedent that might result if the application were

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to be granted. Lastly, the ANC requested, for several stated reasons, that the Board not consider the memorandum from OSSE.

Persons in Support or Opposition. No persons testified in support or opposition, but the Board received three letters and one petition (with 27 signatures), in support, and four letters in opposition. The Board also received a letter in support from Councilmember Yvette Alexander. (Exhibit No. 38).

FINDINGS OF FACT

The Subject Property and the Surrounding Neighborhood

1. The subject property is located at address 3217 Alabama Avenue, S.E., in Square 5677, Lot 804, and in an R-1-B zone district.
2. The property is an unremarkable rectangular lot, 50 feet wide, by approximately 125 feet long, with frontage on Alabama Avenue, S.E., and a 16-foot wide alley running along its rear lot line.
3. The property is improved with a two and one-half story one-family detached dwelling with a two-car detached garage at its rear, accessed from the alley.
4. The dwelling on the property is flanked by similarly-sized one-family detached dwellings, and the neighborhood is a low-density residential neighborhood.
5. For the last eight years, the Applicant has operated a child development home, with a license for six children, in the dwelling on the subject property.

The Applicant's Proposal

6. The Applicant proposes to expand the use on the subject property to a child development center for 24 children, with six staff.
7. The CDC will occupy the basement and main floor of the dwelling on the subject property and the second floor will remain a residential unit.
8. There will be no addition to, nor any exterior change to, the subject dwelling.
9. With six staff, the CDC will require two parking spaces, and the residential unit will require one parking space. 11 DCMR § 2101. There are currently two on-site parking spaces in the garage, and a third will be added at the rear of the property after removal of a fence.
10. No outdoor play space will be provided on the property, but the children will use off-site play areas – either the playground at the nearby Hillcrest Recreation Center or the

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playground at Oxon Run Park in Prince George's County, Maryland. Both off-site play areas are enclosed by fencing.

11. The CDC will operate a 16-passenger van to transport the children to the off-site play areas when necessary.
12. The CDC's hours of operation will be Monday through Friday, 7:00 a.m. to 6:00 p.m.
13. Pick-up and drop-off of children will occur on either 32nd Street or 33rd Street, S.E., neither of which have any parking restrictions in the area of the subject property.
14. No pick-up or drop-off of children will occur on Alabama Avenue, S.E., and the Applicant/CDC staff will inform parents, both orally and in writing, that no such pick-up or drop-off of children may occur.
15. There is no other CDC or elderly development center within 1,000 feet of the subject property.
16. It appears that the CDC will be capable of meeting all code and licensing requirements.

CONCLUSIONS OF LAW

The Special Exception

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief 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 neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 205.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to determining whether the proposed exception satisfies the ... requirements" of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

This application proposes the expansion of a child development home currently serving six children to a CDC serving a maximum of 24 children. Section 205 of the Zoning Regulations sets forth the provisions which the new CDC use must meet. Subsections 205.2 and 205.10 concern the licensing of the CDC. Licensing is done by the OSSE, Division of Early Education,

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Compliance and Integrity Division, Child Care Licensing Unit, which has recommended the granting of the special exception.

Subsection 205.3 requires that the CDC not cause any objectionable traffic conditions or unsafe drop-off/pick-up conditions. Although the CDC will be housed in a building fronting on Alabama Avenue, S.E., a busy thoroughfare, drop-off and pick-up will not take place there, but will occur on the nearby side streets. DDOT specifically deemed 32nd and 33rd Streets as appropriate in its report, and drop-off and pick-up activities will not entail long-term use of parking spaces on these streets. (Exhibit No. 28, at 2). The Applicant has agreed to, and must, inform parents, both orally, and in writing, that no drop-offs or pick-ups may occur on Alabama Avenue. DDOT also stated in its report that the parking of vehicles operated by the CDC employees, which may entail longer-term use of on-street parking spaces, “will have little impact on the curbside [parking] inventory in Hillcrest.” *Id.* The two parking spaces required for the use will be provided on the subject property, as well as the one space required for the residential unit on the site. The CDC will therefore provide sufficient off-street parking, meeting the requirement of § 205.4, as well as a safe drop-off/pick-up location, meeting the requirements of § 205.3.

The CDC will not cause any objectionable conditions due to noise or other disturbance. It will not have an on-site outdoor play area, which could be a source of noise. Instead, the children will be transported in the CDC-maintained van to one of two designated off-site playground areas for outdoor recreation. This will limit the noise and activity at the CDC itself, thereby satisfying §§ 205.5 and 205.7, as well as the requirement of § 3104 that the CDC not adversely affect the use of neighboring properties. Subsection 205.8 is satisfied as well, as there is no other child or elderly development center within 1,000 feet of the subject property.

Subsection 205.6 allows the Board to impose further requirements on the CDC use to protect nearby properties, which it has done by way of the Conditions listed at the end of this order. And, § 205.9 requires that the application be submitted to various District government agencies, which was done.

Section 3104 also requires that the use be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. A CDC use is allowed as a special exception use in this R-1-B zone district, and is therefore deemed compatible with the zone. There is no aspect of this particular CDC which undermines this presumption of compatibility. Accordingly, the Board concludes that the CDC meets all the provisions of § 205, and therefore, the special exception must be granted. *First Washington Baptist Church*, 423 A.2d at 701.

Great Weight

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities

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and an explanation of why the Board did or did not find their views persuasive. OP was in support of granting the special exception, and the Board agrees with its position.

ANC 7B opposed the granting of the special exception, citing many issues and concerns. The ANC expressed considerable concern with drop-off and pick-up of children, no matter where it occurred. The ANC report makes clear that this stretch of Alabama Avenue, S.E. is dangerous and not appropriate for drop-off/pick-up activities. With this, the Board agrees. But, the ANC report goes on to state that the side streets – 32nd and 33rd Streets – are also inappropriate as they are “short and narrow” and already parked on. DDOT, however, stated otherwise and advised the Board to “stipulate” that parents park on these streets when arriving at/departing from the CDC. Although the side streets may already have cars parked on them, there was no evidence in the record that they could not sustain the drop-off/pick-up activity. Such activity does not require long-term parking of vehicles. Dropping-off a child ordinarily does not take much time and when one vehicle leaves after drop-off, another takes its place. DDOT further stated that even the longer-term parking on the side streets by the CDC employees would have little impact on the neighborhood.

The ANC also stated that the alley behind the subject dwelling was not an acceptable drop-off/pick-up location. The alley is reasonably wide, at 16 feet, but DDOT did not comment on this potential use of the alley, and it does not appear from the record that it is contemplated.

Concerning the use of the Hillcrest Recreation Center, the ANC report seems to indicate that the Center’s playground would not be made exclusively available for the CDC’s use, but exclusivity is not necessary. The ANC report states that the ANC Commissioner who drafted it did not believe that there would be any “real opportunity for Ms. Brown to be able to daily use the rec. center grounds for recreational space for her personal business venture.” (Exhibit No. 31, at 17th page). The Board, however, received no input directly from the Hillcrest Recreation Center, and if it is not available for the CDC’s use, the CDC’s children will be taken to the alternative location at Oxon Run Park.

The ANC also mentioned the possibility of sanitation concerns and indicated that the yard area at the subject property would be inadequate as an outdoor play space. The yard is not proposed to be used as outdoor play space and there is no requirement in the Zoning Regulations that a CDC have such space. As for sanitation, the ANC notes that some debris – cardboard boxes and a small-sized old chair - had collected behind the garage, but does not note any more serious sanitation concerns. There is no indication in the ANC report whether this debris had been left for a long time or whether it would be picked up in the next trash collection, and failing more information, or evidence of more egregious sanitation problems, the Board does not agree with the ANC’s contention that sanitation may be an issue of concern.

The ANC states that there are three other nearby CDCs, but the Zoning Regulations only concern themselves with other CDCs within 1,000 feet of the subject property. The ANC does not claim that these other CDCs are within 1,000 feet. Furthermore, § 205.8 merely says that the

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cumulative effects of other CDCs within 1,000 feet must be considered; it does not say that a CDC use may not be approved if others exist within 1,000 feet thereof.

Similar to the ANC's concern with the proximity of other CDCs, the ANC repeatedly questions the "need" for the Applicant's proposed CDC, but the question of need is not relevant to the special exception analysis. Neither is the residence of the Applicant, nor her connection to the neighborhood, both of which are discussed by the ANC, relevant to the special exception. The ANC also refers to the application, if granted, as resulting in a "zoning change," but the special exception has no effect on the zoning. With or without the special exception use, the zone district remains R-1-B.

The final concern of the ANC is licensing. The ANC report states that the ANC believes the facility is "not capable of meeting all applicable codes and licensing requirements." (Exhibit No. 31, at 15th page). The report then requests that the Board disregard the memorandum from the OSSE, at least partly because "this ANC has no confidence in the ethics of the CCLU [Child Care Licensing Unit] surveys/inspection." (Exhibit No. 31, at 18th page). The Board has read both the OSSE memorandum and the ANC's comments regarding it and that concludes that the OSSE memorandum may be considered for what it says and no more. Based on all the facts in the record, however, it appears to the Board that the CDC use will be able to meet the applicable code and licensing requirements, and the Board so finds.

For all the reasons stated above, the Board concludes that the application satisfies the burden of proof for a special exception under § 3104, pursuant to § 205, to establish a CDC at the subject property. Accordingly, it is **ORDERED** that the application be **GRANTED, SUBJECT to the following CONDITIONS:**

1. Approval shall be for a period of **FIVE (5) YEARS** beginning on the date upon which the order became final.
2. The CDC use must provide three zoning-compliant parking spaces on the subject property.
3. No pick-up or drop-off of children shall occur on Alabama Avenue, S.E., and the CDC staff shall inform all parents and caregivers, both orally and in writing, not to pick up or drop off children on Alabama Avenue, S.E.
4. The CDC's hours of operation shall be Monday through Friday, 7:00 a.m. to 6:00 p.m.
5. The CDC shall have a maximum enrollment of 24 children and a maximum staff of six.

VOTE: **3-0-2** (Meridith H. Moldenhauer, Nicole C. Sorg, and Shane L. Dettman to Approve; Konrad W. Schlater not present, not voting; no other Board member (vacant) participating)

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

ATTESTED BY:



JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 18 2010

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.

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, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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As Director of the Office of Zoning, I hereby certify and attest that on AUG 18 2010, 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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Vongela A. Brown
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ATTESTED BY:

A handwritten signature in cursive script that reads "Jamison L. Weinbaum".

JAMISON L. WEINBAUM
Director, Office of Zoning

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