

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18791 of Community Connections, Inc., pursuant to 11 DCMR § 3104.1, for a special exception for a community residence facility (eight residents¹ and three staff) under § 218, in the R-1-B District at premises 5422 Blair Road, N.E. (Square 3703, Lot 95).

HEARING DATE: July 8, 2014
DECISION DATE: July 8, 2014

DECISION AND ORDER

This self-certified application was submitted on April 24, 2014 by Community Connections, Inc. (the “Applicant”), the owner of the property that is the subject of the application. The application requests a special exception for a community residence facility, with eight residents and three staff, under § 218, in the R-1-B District at premises 5422 Blair Road, N.E. (Square 3703, Lot 95) (the “Subject Property”). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated April 25, 2014, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4B, the ANC in which the Subject Property is located; and Single Member District/ANC 4B08. Pursuant to § 3113.13, the Office of Zoning mailed letters on May 2, 2014 providing notice of the hearing to the Applicant, ANC 4B, and the owners of all property within 200 feet of the Subject Property. Notice of hearing was published in the *D.C. Register* on May 2, 2014 at 61 DCR 4389.

Party Status. The Applicant and ANC 4B were automatically parties to this proceeding. The Board did not receive any additional requests for party status.

¹ The initial application proposed to increase the capacity of the facility to 10 residents; however, after meeting with ANC 4B and neighborhood groups, the Applicant reduced the proposed number of residents to eight.

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Applicant's Case. The Applicant described the operations of its existing community residence facility for six individuals with mental health issues and with three rotating staff. The Applicant proposed to construct a two-story addition on the northern side of the property to accommodate the handicap-accessible portion of the building. With the addition, the Applicant proposed to increase the capacity of the facility from six to eight residents. The Applicant also indicated that the staff would serve in rotating shifts, such that no staff member would be sleeping on-site. Based on the information provided, the Applicant argued that the load increase to eight residents would meet the special exception requirements of § 3104.1 and § 218.

OP Report. By memorandum dated July 1, 2014, the Office of Planning recommended approval of the special exception relief pursuant to § 218, provided that the maximum number of residents be limited to eight and that a parking area for two vehicles be maintained in the rear yard for use by staff. (Exhibit 29.)

DDOT Report. By memorandum dated July 1, 2014, the District Department of Transportation indicated that it had no objection to the requested special exception relief. DDOT noted, however, its concerns regarding the Applicant's proposed new curb-cut on Kennedy Street. (Exhibit 28.)

ANC Report. By letter dated June 24, 2014, ANC 4B indicated that it discussed the application at its properly noticed, regularly scheduled meeting on June 23, 2014. With a quorum present, the ANC voted 7-2 in opposition to the proposal to increase the number of residents at the facility from six to 10. The report noted that some neighbors oppose any increase in the number of residents at the facility and that the ANC "strongly recommends" that the number of residents be limited to eight. (Exhibit 26.)

Persons in support. The District of Columbia Department of Behavioral Health submitted a letter in support on July 1, 2014. (Exhibit 30.) At the public hearing, Delabian Rice-Thurston and Robert Thurston, residents of 13 Kennedy Street, N.E., testified in support of the application. Both individuals were supportive of additional mental health facilities in the neighborhood and noted that, through their involvement with the National Alliance on Mental Illness, they have learned that Community Connections, Inc. is a well-respected organization.

Persons in opposition. Three neighboring residents submitted letters of opposition: Elizabeth Lazaro residing at 26 Kennedy Street, N.E. (Exhibit 24); Thelma Morris-Lindsey residing at 5425 Blair Road, N.E. (Exhibit 25); and Kevin Josey residing at 5421 Blair Road, N.E. (Exhibit 27). The letters raised concerns about the expansion of the community residence facility and requested additional information about the nature of the facility and its operations. Two nearby residents, Reverend Graylan Hagler and Jamie McAnce testified in opposition at the public hearing. Rev. Hagler's testimony indicated that he had concerns about the operations of the facility located at 11 Jefferson Street, N.E. and noted that the expansion of the Applicant's facility would change the character of the neighborhood. His testimony also raised the issue of a murder that had taken place on the Subject Property approximately seven years ago. Ms.

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McAnee testified about the potential parking impacts and privacy issues that could arise from the granting of the application.

FINDINGS OF FACT

The Subject Property

1. The property that is the subject of this application is located at the corner of Kennedy Street, N.E. and Blair Road, N.E. at the address 5422 Blair Road, N.E. (Square 3703, Lot 95) (the “Subject Property”). The Subject Property abuts a 15-foot wide alley to the south.
2. The Subject Property is zoned R-1-B. The surrounding neighborhood includes two-story detached one-family dwellings.
3. The Subject Property is improved with a two-story detached dwelling with a basement. There are two off-street parking spaces on the lot. Vehicular access to the Subject Property is available from the alley.
4. On the Subject Property, the Applicant operates a community residence facility housing six individuals. The facility serves as a permanent residential facility for individuals with mental health issues, though some residents may move out to pursue more independent living arrangements or individuals may move in to seek additional support and care.
5. The Applicant operates 12 licensed group homes and various other independent housing units in the District.
6. The Applicant has operated the existing community residence facility on the Subject Property for 13 years, but more recently, the property has been vacant for approximately two years as the Applicant sought funds to complete a renovation on the building.
7. An existing community-based residential facility (“CBRF”) that houses eight individuals is located at 11 Jefferson Street, N.E., approximately 273 feet from the Subject Property.
8. Neighbors have raised concerns about the operations of the CBRF located at 11 Jefferson Street, N.E. Complaints about the facility include that, in the past, residents have been unsupervised and have walked to a nearby church to seek shelter.
9. Regarding the Applicant’s facility, neighbors indicated that the tendency of residents to sit on the rear porch and look into neighbors’ yards has created privacy concerns. In addition, neighbors sought additional information about the nature of the facility and its operations.

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10. Neighbors also voiced concerns about a murder that occurred at the Applicant's facility approximately seven years ago; however, such incidents are rare on the Applicant's properties.
11. The Applicant has received no complaints regarding noise or traffic from neighboring residents throughout the 13 years of its operation on the Subject Property.

The Applicant's Proposal

12. The Applicant received grant funding from the Department of Housing and Community Development to renovate the existing structure in order to provide single-floor access to mobility-challenged individuals.
13. Accordingly, the Applicant proposes to construct a two-story plus basement addition on the existing structure.
14. Once the addition is completed, the Applicant proposes to increase the capacity of the facility from six residents to eight residents.
15. The Applicant plans for staff members of the facility to serve 12-hour rotating shifts. Previously, staff members served multiple-day shifts and would sleep at the facility. Under the Applicant's proposal, the facility would be staffed by at least one individual at all times. Part-time staff members would provide support during certain busy periods, such as mealtimes, and at most, three staff members would be on duty at one time. No staff member would be sleeping on-site.
16. The staff members at the facility are clinically trained to work with individuals with mental health issues.
17. Based on the proposed renovations, the Applicant intends to house, at maximum, four mobility-challenged individuals on the first floor and four individuals on the second floor.
18. The Applicant proposes to retain the two existing parking spaces on the Subject Property. Only one parking space is required by § 2101.1 for a community residence facility housing eight individuals.
19. The residents of the community residence facility would not drive or own vehicles. Therefore, the two on-site parking spaces would serve staff and visitors.
20. The Applicant's existing facility is in good standing with the District Department of Behavioral Health and the expansion of the facility to accommodate two additional residents would meet all code and licensing requirements.

The Zoning Relief Required

21. A community residence facility is a subcategory of CBRF that meets the definition for and is licensed as a community residence facility under the Health Care Facilities and Community Residence Facilities Regulations, 22 DCMR § 3099.1 (1986) (superseded). (11 DCMR § 199.1.)
22. In the R-1 District, a community residence facility for seven or eight residents is permitted as a matter of right, provided that there is no existing CBRF for seven or more persons within the same square or within a 1,000 foot radius of any portion of the Subject Property. (11 DCMR § 201.1(v).)
23. Because an existing CBRF for eight individuals is located at 11 Jefferson Street, N.E., approximately 273 feet from the Subject Property, the Applicant may not establish the facility as a matter of right;² however, § 218 permits a community residence facility for up to 15 persons in the R-1 District by special exception.
24. The R-1 District is designed to protect quiet residential areas and to promote a suitable environment for family life. (11 DCMR §§ 200.1–200.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief to establish a community residence facility for eight residents under § 218, in the R-1-B District at premises 5422 Blair Road, N.E. (Square 3703, Lot 95) (the “Subject Property”). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g) (2) (2012 Repl.) to grant special exceptions, 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 adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

In this case, the Applicant must meet the specific conditions enumerated in § 218, which include the following: First, there shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility. (11 DCMR § 218.3.) The proposed facility shall meet all applicable code and licensing requirements. (11 DCMR § 218.4.) Additionally, the facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area. (11 DCMR § 218.5.) Pursuant to § 218.2, a community residence facility permitted by special exception may not be located within the same square as or within 1,000 feet of an existing CBRF. Subsection

² Subsection 201.1 (f) permits, as a matter of right “community-based residential facility for occupancy by persons with disabilities; provided, that the determination of disability facility shall be made according to the reasonable accommodation criteria in 14 DCMR § 111, ‘Procedures for Reasonable Accommodation under the Fair Housing Act’.”

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218.6 notes, however, that the Board may approve more than one community-based residential facility in a square or within a 1,000 foot radius if “the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.”

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, the 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)).

The Board finds that the Applicant has met the special exception requirements of § 218. First, the Board finds that the Applicant will provide appropriate off-street parking, as required by § 218.3. Although only one parking space is required under § 2101.1, there are two parking spaces located on site. As Applicant has testified, the residents of the facility do not drive; therefore, the parking spaces will be needed by staff and visitors only. As an additional measure to mitigate potential parking impacts, the Board has required the Applicant to prohibit staff members from using street parking in the neighborhood. Further, the Board credits OP’s report stating that the Applicant’s existing facility is in good standing with the District Department of Behavioral Health and that the expansion of the facility would meet all code and licensing requirements. In addition, the Board finds that the facility will create no adverse impacts because of traffic, noise, or operations. The Applicant has operated a community residence facility for six residents on the Subject Property for approximately 13 years and has shown that its operation of the facility has not created excessive noise or traffic in the area. The Applicant now proposes a modest increase in capacity, from six residents to eight residents, and the Board finds that the facility will continue to operate in a way that does not have an adverse impact on the surrounding properties. Specifically, the staffing plan proposed by the Applicant – to have staff members serve 12-hour shifts such that no staff members must sleep at the facility – will allow for the safe and orderly operation of the facility. Nevertheless, the Board is sensitive to neighbors’ concerns and their requests for better communication with the Applicant. Accordingly, the Board has required that the Applicant appoint a Community Relations Coordinator and to distribute the Coordinator’s name to neighbors.

As is required by § 218.6, the Board finds that the cumulative effects of the Applicant’s facility and the existing CBRF at 11 Jefferson Street, N.E. will not have an adverse impact on the neighborhood because of traffic, noise, or operations. Though some neighbors have raised concerns regarding the facility at 11 Jefferson Street, N.E., the Board finds that increasing the capacity of the Applicant’s facility by two residents will not result in a negative cumulative impact on the neighborhood. Therefore, the Board finds that the Applicant has met the requirements for special exception relief under § 218.

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The Board also concludes that the Applicant has satisfied the burden of proof for a special exception pursuant to § 3104.1. The proposed community residence facility will be in harmony with the general purpose and intent of the zoning regulations and zoning plan for the R-1-B Zone District. The R-1 District is intended to serve as a quiet residential area, and the Board finds that the operation of the Applicant's community residence facility as permanent housing for individuals with mental illness issues fits within that stated purpose. Further, as discussed in greater detail within the context of § 218, the Board finds that the facility will not tend to adversely affect the use of neighboring properties.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed, the Board concurs with OP's recommendation to approve the requested relief.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) In its report, ANC 4B indicated that it voted 7-2 in opposition to the proposal to increase the number of residents at the facility from six to 10, based on the Applicant's original proposal. The report also noted that the ANC "strongly recommends that the number of residents remain limited to eight." (Exhibit 26.) The Applicant subsequently reduced the proposed number of residents to eight, based on this recommendation. Therefore, this issue and concern has been addressed. The ANC further indicated generally that it had heard "comments and concerns from residents who oppose any increase in the number of residents at the Facility." (Exhibit 26). The Board considered these concerns, as well as those raised by residents who provided testimony in opposition, and in light of these concerns, has imposed certain conditions on the Applicant. The conditions will provide for easier communication between the facility and its neighbors and will serve to mitigate potential impacts on parking in the area. Ultimately though, the Board was not persuaded to deny the application. As previously discussed, the Applicant has shown that the operation of the facility will cause no significant impacts on traffic or noise in the neighborhood.

Based on the findings of fact and conclusions of law, the Board finds that the Applicant has satisfied the burden of proof with regard to the request for special exception to establish a community residence facility, with eight residents and three staff, under § 218, in the R-1-B District at premises 5422 Blair Road, N.E. (Square 3703, Lot 95). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT to APPROVED ARCHITECTURAL PLANS at EXHIBIT 4**, and **SUBJECT** to the following **CONDITIONS**:

1. The Applicant shall appoint a Community Relations Coordinator and shall distribute to neighbors within 200 feet of the Subject Property the name of the Community Relations Coordinator.
2. The Applicant shall prohibit staff from using on-street parking.

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VOTE: **3-0-2** (Peter G. May, Jeffrey L. Hinkle, and Lloyd J. Jordan to Approve;
S. Kathryn Allen and Marnique Y. Heath to Deny.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 20, 2015

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 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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY

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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, 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.