

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18864/18403-A of Roslyn Taylor, Motion for Modification of Order No. 18403, pursuant to § 3129.7 of the Zoning Regulations, to allow the expansion of a child development center (29 children and 10 staff)¹ in the R-1-B District at premises 4428 Ord Street, N.E. (Square 5117, Lot 838).

The original application, was pursuant to 11 DCMR § 3104.1, for a special exception under section 205 to allow a child development center (12 Children and 6 Teachers) in the R-1-B District at premises 4428 Ord Street, N.E. (Square 5117, Lot 838).

HEARING DATE (Application 18403):	September 18, 2012
DECISION DATE (Application 18403):	September 18, 2012
FINAL ORDER ISSUANCE DATE (No. 18403):	September 19, 2012
HEARING DATE FOR MODIFICATION:	December 2, 2014
MODIFICATION DECISION DATE:	December 2, 2014

SUMMARY ORDER ON REQUEST FOR MODIFICATION

BACKGROUND

On September 18, 2012, the Board of Zoning Adjustment (the “Board” or “BZA”) approved Roslyn Taylor’s (the “Applicant”) original request, pursuant to 11 DCMR § 3104.1, for a special exception under § 205 to allow a child development center (12 Children and six Teachers) in the R-1-B District at premises 4428 Ord Street, N.E. (Square 5117, Lot 838). The approval was given without a term limit or any additional enumerated conditions.

BZA Order No. 18403, approving the original request, was issued on September 19, 2012. (Exhibit 7, Case No. 18864.)

¹ In its request the Applicant asked for a modification of the underlying approval of a child development center for 27 children and eight to nine staff. On its own motion, the Board, in granting the requested relief, raised the approved number of children to 29 and staff to 10. The caption has been amended accordingly and these numbers are also reflected in the conditions to this order.

WAIVER OF REQUIREMENT TO FILE NEW APPLICATION AND GRANT OF EXTENSION OF ORDER NO. 18403

On August 27, 2014, the Applicant submitted the current application, Case No. 18864, for a Modification to BZA Case No. 18403 to allow the expansion to the existing child development center in the R-1 District at premises 4428 Ord Street, N.E. (Square 5117, Lot 838). Order No. 18403 was issued September 19, 2012, and based on the language in the final paragraphs in that Order, the Order remained valid until September 18, 2014, when according to the Office of the Attorney General (“OAG”), the Order expired. At the end of Order No. 18403, there are several final paragraphs which are part of the Order, one of which states:

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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

According to the paragraph in question, by September 19, 2014, the Applicant was to have filed plans to secure any permits for construction and have established the child development center. The record reflects that the child development center was established and, according to the Applicant, has been in continuous operation since that approval was given. The Board granted the approval in Case No. 18403 without conditioning its approval with a term limit.

In Case No. 18864, which was filed August 28, 2014, before Order No. 18403 would expire, the Applicant couched its request as a modification to the prior approval in Case No. 18403, to allow for expansion of the child development center that has continuously operated in that space since the approval of Case No. 18403. According to the Office of the Attorney General (“OAG”), due to the terms of the final paragraph cited above, Order No. 18403 should be deemed to have expired on September 19, 2014, and as, pursuant to 11 DCMR § 3129.9, filing a modification request would not toll the expiration of the earlier Order, the Applicant should have filed this case as a new application or requested an extension of time to toll the expiration of Order No. 18403 so the Board could consider the modification request.

Subsection 3129.9 states that “the filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not

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extend the validity of any such order.” Pursuant to that subsection, filing the request for modification of Case No. 18403 would not toll the expiration of Order No. 18403.

The Applicant argued that the Order should not be deemed to have expired, as the child development center existed and was continuously operating under the earlier approval and there were no term limits placed on its operation.² All that the Applicant sought to do here was to expand an existing child development center operation which had no term limits placed on its operation.

At the public hearing on this application, the Board, on its own motion and by consensus, waived any untimeliness requiring the Applicant to file a new application and extended the validity of Order No. 18403 so it could hear the case as a modification request.

MOTION FOR MODIFICATION

On August 27, 2014, the Applicant filed an Application No. 18864 for a Modification to BZA Case No. 18403 to allow the expansion to the existing child development center in the R-1 District at premises 4428 Ord Street, N.E. (Square 5117, Lot 838). The Applicant submitted updated architectural plans (Exhibit 11, Case No. 18864) with its request to modify the previously approved special exception to expand the number of children from the currently permitted 12 to 27 and the number of staff from the currently permitted six to eight or nine.³

According to the Applicant, pursuant to the approval granted in BZA Order No. 18403, the Applicant has provided home-based child care at the subject property for 12 children through a program known as Lia’s Rainbow Center (“Lia’s Rainbow”). Children who participate in Lia’s Rainbow range in age from newborns to six years old. The child care schedule is designed to accommodate a variety of work schedules, including child care for parents who attend school during the day and evening, as well as those who work evening and overnight shifts. Over the past two years, there has been significant and growing demand for child care at Lia’s Rainbow, and the Applicant therefore is seeking a modification of the original approval to (i) increase the number of children permitted at the child development center from 12 to 27, (ii) increase the number of teachers permitted in the child development center from six to eight or nine, and (iii) construct a small addition to the existing house on the subject property to accommodate the expanded child development center. (Exhibit 5, Case No. 18864.)

² There was no discussion of whether the Applicant had previously filed plans to secure a building permit with the Department of Consumer and Regulatory Affairs within the two-year period, thereby leaving the Order valid based on the alternative language in the final paragraph in Order No. 18403.

³ On its own motion, the Board in granting the requested relief raised the approved number of children to 29 and staff to 10.

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Pursuant to § 3129.7, the Board conducted a public hearing on the requested modification on December 2, 2014. OP filed a report dated November 25, 2014, recommending approval of the requested modification to Order No. 18403, subject to six conditions, and appeared at the hearing.⁴ (Exhibit 25, Case No. 18864.) The affected ANC, ANC 7D, which was a party in support to Case No. 18403, filed a letter dated September 19, 2014, noting its unanimous vote in support of the modification request, at its regularly scheduled public meeting held on September 9, 2014, at which a quorum was present. (Exhibit 23F, Case No. 18864.) Nine letters of support from neighboring property owners and District organizations were also submitted for the record. (Exhibit 23G, Case No. 18864.) A letter of support for the expansion of the child development center was submitted from the Office of the State Superintendent of Education. (Exhibit 23E, Case No. 18864.) The District Department of Transportation (“DDOT”) submitted a report indicating no objection to the expansion of the child development center.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3129, that the requested modification can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. No parties opposed this modification. Accordingly, a decision of the Board to grant this modification would not be adverse to any party.

The Board concludes that the Applicant’s proposed Modification seeking to expand the child development center approved in Case No. 18403 is well supported and consistent with requirements of § 3129.7 of the Zoning Regulations and represents a modification that does not change the material facts the Board relied upon in approving the original application.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law.

It is therefore **ORDERED** that this application (No. 18664) for modification of the approval granted in Case No. 18403 be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The hours of operation shall be from 7:00 a.m. to 6:00 a.m.
2. The number of enrolled children shall not exceed 29.
3. The number of staff shall not exceed 10.

⁴ In its report, OP noted that it had reviewed the proposed construction’s compliance with the zoning regulations and concluded that because the addition could be constructed by-right, there was no need for Board action on it. (Exhibit 25, Case No. 18864.)

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4. Outdoor activities shall be supervised and conclude by 8:00 p.m.
5. Trash shall be kept on-site in a sealed, odor-free container and collected once a week by a commercial service.
6. Staff shall monitor the dropping off and picking up of the children.

In all other respects, Order No. 18403 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON SEPTEMBER 18, 2012: 4-0-1

(Lloyd J. Jordan, and Marcie I. Cohen, Nicole C. Sorg and Jeffrey L. Hinkle to APPROVE; Rashida Y.V. MacMurray not present, not voting.)

VOTE TO WAIVE UNTIMLINESS OF APPLICATION NO. 18864, EXTEND VALIDITY OF ORDER NO. 18403, AND TO MODIFY ORDER NO. 18403 ON DECEMBER 2, 2014: 4-0-1

(Lloyd J. Jordan, S. Kathryn Allen, Jeffrey L. Hinkle, and Peter G. May to APPROVE; Marnique Y. Heath, not present or voting.)

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

A majority of the Board members approved the issuance of this summary order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: December 11, 2014

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.