

INTRODUCED: December 8, 2014

AN ORDINANCE No. 2014-265-2015-27

To authorize the special use of the property known as 3410 Cliff Avenue for the purpose of authorizing a day nursery for up to 12 children, upon certain terms and conditions.

Patron – Mayor Jones (By Request)

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JAN 12 2015 AT 6 P.M.

WHEREAS, the owner of the property known as 3410 Cliff Avenue, which is situated in a R-5 Single-Family Residential District, desires to use such property for the purpose of a day nursery for up to 12 children, which use, among other things, is not currently allowed by section 114.410.1 of the Code of the City of Richmond (2004), as amended; and

WHEREAS, in accordance with section 17.11 of the Charter of the City of Richmond (2010), as amended, it has been made to appear that, if granted subject to the terms and conditions set forth in this ordinance, the special use granted by this ordinance will not be detrimental to the safety, health, morals and general welfare of the community involved, will not tend to create congestion in streets, roads, alleys and other public ways and places in the area

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: FEB 9 2015 REJECTED: _____ STRICKEN: _____

involved, will not create hazards from fire, panic or other dangers, will not tend to overcrowding of land and cause an undue concentration of population, will not adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements, and will not interfere with adequate light and air; and

WHEREAS, (i) the City Planning Commission has conducted a public hearing to investigate the circumstances and conditions upon which the Council is empowered to authorize such use, (ii) the City Planning Commission has reported to the Council the results of such public hearing and investigation and its recommendations with respect thereto, and (iii) the Council has conducted a public hearing on this ordinance at which the person in interest and all other persons have had an opportunity to be heard;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. **Finding.** Pursuant to section 114-1050.1 of the Code of the City of Richmond (2004), as amended, the Council hereby finds that the special use set forth in and subject to the terms and conditions of this ordinance will not (i) be detrimental to the safety, health, morals and general welfare of the community involved, (ii) tend to create congestion in streets, roads, alleys and other public ways and places in the area involved, (iii) create hazards from fire, panic or other dangers, (iv) tend to overcrowding of land and cause an undue concentration of population, (v) adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements, or (vi) interfere with adequate light and air.

§ 2. **Grant of Special Use Permit.**

(a) Subject to the terms and conditions set forth in this ordinance, the property known as 3410 Cliff Avenue and identified as Tax Parcel No. N000-1350/010 in the 2014 records of the City Assessor, being more particularly described in a deed dated August 3, 1964, and recorded in Deed Book 5150, Page 266, in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia, a copy of which is attached to and made a part of this ordinance, hereinafter referred to as "the Property," is hereby permitted to be used for the purpose of a day nursery for up to 12 children, hereinafter referred to as "the Special Use."

(b) The adoption of this ordinance shall constitute the issuance of a special use permit for the Property. The special use permit shall inure to the benefit of the owner or owners of the fee simple title to the Property as of the date on which this ordinance is adopted and their successors in fee simple title, all of which are hereinafter referred to as "the Owner." The conditions contained in this ordinance shall be binding on the Owner.

§ 3. **Special Terms and Conditions.** This special use permit is conditioned on the following special terms and conditions:

(a) In addition to the uses permitted in the underlying zoning district, the Property shall be permitted for use as a day nursery for up to 12 children, not including children residing on the Property.

(b) The hours of operations for the day nursery shall be limited to 7:00 a.m. to 6:00 p.m. daily.

(c) A minimum of 50 square feet of indoor space shall be provided for each child under care within the area of the building devoted to the day nursery use.

(d) A minimum of 100 square feet of outdoor play space shall be provided for each child under care.

(e) No more than three persons employed by the day nursery shall be present on the Property at any one time.

(f) Off-street parking shall not be required.

(g) The day nursery shall be licensed by the Virginia Department of Social Services.

§ 4. **Supplemental Terms and Conditions.** This special use permit is conditioned on the following supplemental terms and conditions:

(a) Storm or surface water shall not be allowed to accumulate on the land. The Owner, at its sole cost and expense, shall provide and maintain at all times adequate facilities for the drainage of storm or surface water from the Property so as not to adversely affect or damage any other property or public streets and the use thereof.

(b) Facilities for the collection of refuse shall be provided in accordance with the requirements of the Director of Public Works. Such facilities shall be located or screened so as not to be visible from adjacent properties and public streets.

(c) Any encroachments existing, proposed on the Plans or contemplated in the future shall require separate authorization and shall be subject to the applicable provisions of the Code of the City of Richmond (2004), as amended, and all future amendments to such laws.

(d) In all other respects, the use of the Property shall be in accordance with the applicable underlying zoning regulations.

§ 5. **General Terms and Conditions.** This special use permit is conditioned on the following general terms and conditions:

(a) No permit implementing this special use permit shall be approved until satisfactory evidence has been presented to the Zoning Administrator that any delinquent real estate taxes applicable to the Property have been paid.

(b) The Owner shall be bound by, shall observe and shall comply with all other laws, ordinances, rules and regulations applicable to the Property, except as otherwise expressly provided in this ordinance.

(c) Words and phrases used in this ordinance shall be interpreted to have the meanings ascribed to them by section 114-1220 of the Code of the City of Richmond (2004), as amended, unless the context clearly indicates that a different meaning is intended.

(d) Notwithstanding any other provision of law, this special use permit is being approved due, in part, to the mitigating effects of each and every condition attached hereto; consequently, if any portion of this ordinance is determined to be invalid for any reason by a final, non-appealable order of any Virginia or federal court of competent jurisdiction, the invalidity shall cause the entire ordinance to be void and of no further effect from the effective date of such order.

(e) The privileges granted by this ordinance may be revoked pursuant to the provisions of sections 114-1050.7 through 114-1050.11 of the Code of the City of Richmond (2004), as amended, and all future amendments to such laws. Failure to comply with the terms and conditions of this ordinance shall constitute a violation of section 114-1080 of the Code of the City of Richmond (2004), as amended, and all future amendments to such law, or any other applicable laws or regulations.

(f) When the privileges granted by this ordinance terminate and the special use permit granted hereby becomes null and void, whether as a result of the Owner relinquishing this

special use permit in a writing addressed to the Director of Planning and Development Review or otherwise, use of the Property shall be governed thereafter by the zoning regulations prescribed for the district in which the Property is then situated.

§ 6. **Implementation.** The Zoning Administrator is authorized to issue a certificate of zoning compliance for the Special Use subject to the terms and conditions set forth in this ordinance. An application for the certificate of zoning compliance shall be made within 180 calendar days following the date on which this ordinance becomes effective. If the application for the certificate of zoning compliance is not made within the time period stated in the previous sentence, this ordinance and the special use permit granted hereby shall terminate and become null and void.

§ 7. **Effective Date.** This ordinance shall be in force and effect upon adoption.

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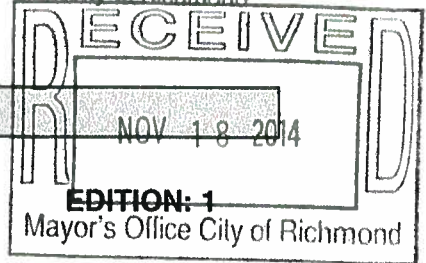
O & R REQUEST

NOV 13 2014



OFFICE OF CITY ATTORNEY
CITY OF RICHMOND
INTRACITY CORRESPONDENCE

Chief Administration Office
City of Richmond



O&R REQUEST

DATE: November 10, 2014

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor (Patron: Mayor, by Request)
(This in no way reflects a recommendation on behalf of the Mayor.)

THROUGH: Christopher L. Beschler, Interim Chief Administrative Officer

THROUGH: Lee Downey, Interim Deputy Chief Administrative Officer for Economic Development and Planning

FROM: Mark A. Olinger, Director, Department of Planning and Development Review

SUBJECT: To authorize the special use of the property known as 3410 Cliff Avenue for use as a day nursery for up to 12 children, upon certain terms and conditions.

ORD. OR RES. No. _____

PURPOSE: To authorize the use of the property known as 3410 Cliff Avenue as a day nursery for up to 12 children, upon certain terms and conditions.

REASON: The subject property is located in an R-5 Single-Family Residential district which does not permit the proposed day nursery use. The applicant is using the property as a day nursery for up to 12 children and is requesting a special use permit to legitimize the existing use of the property.

RECOMMENDATION: In accordance with the requirements of the City Charter and the Zoning Ordinance, the City Planning Commission will review this request and make a recommendation to City Council. This item will be scheduled for consideration by the Planning Commission at its January 5, 2015 meeting. A letter outlining the Commission's recommendation will be forwarded to City Council following that meeting.

BACKGROUND: The subject property is located near mid-block on Cliff Avenue between East Ladies Mile Road Hazelhurt Avenue and consists of a parcel with approximately 6,930 square feet of land area. The property is currently improved with a one and a half-story, single-family detached dwelling constructed in 1941.

201411006

Under normal zoning requirements, property owners in the R-5 Single-Family Residential district may provide day care for up to five children without special authorization. The applicant uses approximately 600 square feet of the existing dwelling as a day nursery for up to 12 children and provides 1200 square feet of outdoor space for use by the children. The remaining portion of the dwelling is used as the applicant's residence.

The proposed ordinance would require the day nursery to be licensed. The ordinance would also limit the hours of operations for the day nursery from 7:00 a.m. to 6:00 p.m. daily. The total number of day nursery employees present at the daycare at any one time would be limited to two. No off street parking will be provided for the use.

The City of Richmond's Master Plan recommends Single-Family Low Density land use for the subject property. This category includes single-family detached dwellings at densities up to seven units per acre and residential support uses such as churches, parks, and recreational facilities (p. 133).

Properties to the north, south, east and west are located in R-5 Single Family Residential district. Surrounding adjacent properties to the subject property are all single family detached dwellings located in the R-5 Single-Family Residential district.

FISCAL IMPACT: The Department Planning and Development Review does not anticipate any impact to the City's budget for this or future fiscal years.

COST TO CITY: Staff time for processing the request; preparation of draft ordinance; and publishing, mailing and posting of public notices.

REVENUE TO CITY: \$1,800 application fee

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: December 8, 2014.

CITY COUNCIL PUBLIC HEARING DATE: January 12, 2015.

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: None

CONSIDERATION BY OTHER GOVERNMENTAL AGENCIES: City Planning Commission, January 5, 2015.

AFFECTED AGENCIES: Office of Chief Administrative Officer
Law Department (for review of draft ordinance)
City Assessor (for preparation of mailing labels for public notice)

RELATIONSHIP TO EXISTING ORDINANCES: None.

ATTACHMENTS: Application Form, Applicant's Letter, Draft Ordinance, Deed

O&R Request
November 10, 2014
Page 3 of 4

STAFF: Leigh V. Kelley, Planner I
Land Use Administration (Room 511)
646-6384

DPDR O&R No. 14-42



Application for SPECIAL USE PERMIT

Department of Planning and Development Review
Land Use Administration Division
900 E. Broad Street, Room 511
Richmond, Virginia 23219
(804) 646-6304
<http://www.richmondgov.com/>

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LAND USE ADMINISTRATION

9738

- Application is hereby submitted for: (check one)
- special use permit, new
 - special use permit, plan amendment
 - special use permit, text only amendment

Project Name/Location

Project Name: Divinity Day Care Date: 04/21/2014

Property Address: 3410 Cliff Avenue Tax Map #: _____

Fee: \$1500.00 Total area of affected site in acres: _____

(See page 3 for fee schedule, please make check payable to the "City of Richmond")

Zoning

Current Zoning: _____

Proposed Use

(Please include a detailed description of the proposed use in the required applicant's report)

Existing Use: Family Day Home

Is this property subject to any previous land use cases?

Family Day Home (Child Care)

- Yes No
- If Yes, please list the Ordinance Number:

Applicant/Contact Person: Dorothy H. Bruce

Company: Divinity Day Care

Mailing Address: 3410 Cliff Avenue

City: Richmond State: VA Zip Code: 23222

Telephone: (804) 321-2858 Fax: ()

Email: reverendb10@gmail

Property Owner: William W & Dorothy H. Bruce

If Business Entity, name and title of authorized signee: Divinity Day Care

(The person or persons executing or attesting the execution of this Application on behalf of the Company certifies that he or she has or have been duly authorized and empowered to so execute or attest.)

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: () Same as Above Fax: ()

Email: _____

Property Owner Signature: William W Bruce Dorothy H Bruce

The names, addresses, telephone numbers and signatures of all owners of the property are required. Please attach additional sheets as needed. If a legal representative signs for a property owner, please attach an executed power of attorney. Faxed or photocopied signatures will not be accepted.

NOTE: Please attach the required plans, checklist, and a check for the application fee (see Filing Procedures for special use permits)

Divinity Day Care

3410 Cliff Avenue
Richmond, VA 23222



(804) 321-2858
FAX (804) 523-3333

August 11, 2014

Mr. Leigh V. Kelley
900 East Broad Street Suite 511
Richmond, VA 23219

Re: Special Use Permit
Family Day Home, R-3 District
File 9738

Dear Mr. Kelley,

Thank you for a positive and informative home visit/inspection. Hopefully, you will find in this correspondence answers to the issues we discussed during your visit. Further, I have attempted to address the comments/concerns mentioned in your letter dated June 13, 2014.

Divinity Day Care is a family day home licensed by the Virginia Department of Social Services to care for up to twelve children (ages 0 months - 12 years). As day care providers, my husband and I have served children for approximately thirteen years. Our neighbors are very supportive, as witnessed by their signatures on the petition and their letters.

William, my spouse, and I care for the children in accordance to the point system set by the Virginia Department of Social Services. The point system ranges from 4 points for infants under age 16 months to 0 points for ages 10+. A single provider is allowed a total of 16 points. Currently we render service to 8 children totaling 16 points.

In the backyard is a fenced in play area. There are age appropriate activities for the children. Children are supervised during outside play by either one or both providers. The children are encouraged to engage in activities that will promote physical health and growth.

Divinity Day Care provides an opportunity for children to grow physically, socially and academically. Not only are children allowed to participate in physical activities, but they are prepared for elementary school. At age four when children graduate from Divinity Day Care, they will have learned nursery rhymes, and recognition of numbers and alphabets. They will have learned to share and form relationships outside of their immediate families.

Divinity Day Care

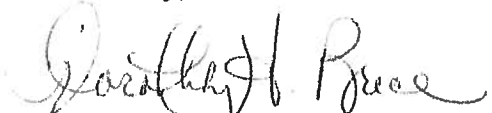
August 11, 2014

Page Two

If granted a "Special Use Permit," at the most, Divinity Day Care will operate for not more than 2 ½ years. For the next 2 ½ years its focus will be to continue to prepare 2-4 year olds for Pre-K and Kindergarten. We will no longer provide care for infants. Our after school program will limit service to no more than 4 students.

Should you have other unanswered questions, please call me at (804) 321-2858 or (804) 321-6180. My email address is reverendlolo@gmail.com.

Sincerely,


Dorothy H. Bruce

Commonwealth of Virginia



DEPARTMENT OF SOCIAL SERVICES

FAMILY DAY HOME LICENSE

Issued to: MS. DOROTHY BRUCE

Address: 3410 Cliff Avenue RICHMOND VA 23222

This license is issued in accordance with provisions of Chapters 1, 17, and 18, Title 63.2, Code of Virginia and other relevant laws, the regulations of the State Board of Social Services, and the specific limitations prescribed by the Commissioner of Social Services, as follows:

<u>CAPACITY</u> 12	
<u>GENDER</u> Both	<u>AGE</u> 1 years 0 months through 12 years 11 months

This license is not transferable and will be in effect May 27, 2014 through May 26, 2016 unless revoked for violations of the provisions of law or failure to comply with the limitations stated above.

ISSUING OFFICE:

Virginia Department of Social Services
Central Licensing Office
1604 Santa Rosa Road, Suite 130

Richmond VA 23229-5008
Telephone: (804) 662-9769

FDH1084775
LICENSE NUMBER

MARGARET ROSS SCHULIZE
COMMISSIONER OF SOCIAL SERVICES

By R. Brent Kennedy
R. Brent Kennedy

Title Licensing Administrator

Date June 15, 2014

5150

This Deed, made this 3rd day of August, 1964 by and between
 LEWIS W. SMITH and MARTHA L. SMITH, his wife,
 parties of the first part, and WILLIAM W. BRUCE and DOROTHY H. BRUCE, his wife,
 parties of the second part;

Witnesseth:

That for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable considerations in hand paid to the parties of the first part by the parties of the second part, receipt whereof is hereby acknowledged, the said parties of the first part do grant and convey unto the said parties of the second part as tenants by the entireties with the right of survivorship as at common law with GENERAL WARRANTY, the following described real estate, to-wit:

THAT certain lot or parcel of land with all improvements thereon situated in the City of Richmond, Virginia, known as 3410 Cliff Avenue, designated as Lot 10, Block A, on a plan of Cliff Avenue Sub-division recorded in Plat Book 18, page 53, Clerk's Office of the Circuit Court of Henrico County, Virginia, to which plat reference is made for a more particular description of the property hereby conveyed.

BEING the same real estate conveyed to Lewis W. Smith and Martha L. Smith, his wife, as tenants by the entireties with the right of survivorship as at common law, by deed from Albert J. Sanderson and Marion S. Sanderson, his wife, dated July 9, 1964, and recorded July 30, 1964, in the Clerk's Office, Richmond Chancery Court.

This conveyance is made subject to restrictions and easements of record, if any, to the extent that same may lawfully affect the above real estate.