



Legislation Text

File #: ORD. 2020-089, **Version:** 1

To amend Ord. No. 2014-222-204, adopted Nov. 10, 2014, as previously amended by Ord. No. 2018-328, adopted Jan. 14, 2019, which authorized the special use of the property known as 2319 Grove Avenue for the purpose of authorizing an expansion to an existing day nursery, to modify the fencing requirements for the roof-top play area, upon certain terms and conditions.

THE CITY OF RICHMOND HEREBY ORDAINS:

I. That Ordinance No. 2014-222-204, adopted November 10, 2014, as previously amended by Ordinance No. 2018-328, adopted January 14, 2019, be and is hereby amended and reordained as follows:

WHEREAS, the owner of the property known as 2319 Grove Avenue, which is situated in a R-6 Single-Family Attached Residential District, desires to use such property for the purpose of expanding an existing day nursery, which, among other things, is not currently allowed by section 30-412.1 of the Code of the City of Richmond (2015), as amended; and

WHEREAS, in accordance with section 17.11 of the Charter of the City of Richmond [~~(2018)~~] 2019, 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 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 30-1050.1 of the Code of the City of Richmond (2015), 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 2319 Grove Avenue and identified as Tax Parcel W000-1039/004 in the [~~2018~~] 2020 records of the City Assessor, being more particularly shown on a survey entitled “Survey and Plat of the Property Known as #2319 Grove Avenue in the City of Richmond, VA,” prepared by Edwards, Kretz, Lohr & Associates, PLLC, and dated November 14, 2018, 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 expanding an existing day nursery, hereinafter referred to as “the Special Use,” substantially as shown on (i) the plans entitled “Ms. Bab’s Day Care, 2319 Grove Avenue - Richmond, VA,” prepared by Henry Tenser, Architect, and dated August 18, 2014, copies of which are attached to and made a part of Ordinance No. 2014-222-204, adopted November 10, 2014, (ii) the plans entitled “Addition - Ms. Babs’ Daycare, 2319 Grove Avenue, Richmond, VA,” prepared by Henry Tenser,

Architect, dated July 9, 2018, and last revised September 13, 2018, and (iii) the plans entitled “Site Plan,” prepared by Joe Cafarella, and dated September 28, 2018, as modified by sheets SK101, SK102, and SK103 of the plans entitled “Ms Babs Nursery School, 2319 Grove Avenue, Richmond, Virginia, and dated December 17, 2019, hereinafter referred to as “the Plans,” copies of which are attached to and made a part of this amendatory ordinance.

(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) The Special Use of the Property shall be as a day nursery for up to 90 children, substantially as shown on the Plans.

(b) No parking shall be required for the day nursery use.

(c) The ground level play areas shall be enclosed with a continuous opaque structural fence or wall not less than four feet in height, substantially as shown on the survey referred to in section 2(a).

(d) The proposed roof-top play area shall have a [~~non-opaque, four-foot-high~~] fence, substantially as shown on the Plans.

(e) The hours of operation for the day nursery shall be limited to the hours between 7:30 a.m. and 7:00 p.m., Monday through Friday.

(f) The number of children using the outdoor play areas at one time shall meet the requirements of the Virginia Department of Social Services or its successor entity.

(g) The day nursery shall be licensed by and operated under the requirements of the Virginia

Department of Social Services or its successor entity.

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

(a) All required final grading and drainage plans, together with all easements made necessary by such plans, must be approved by the Director of Public Utilities prior to the issuance of the building permit.

(b) 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.

(c) 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.

(d) 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 (2015), as amended, and all future amendments to such laws.

(e) 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 30-1220 of the Code of the City of Richmond (2015), 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 30-1050.7 through 30-1050.11 of the Code of the City of Richmond (2015), 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 30-1080 of the Code of the City of Richmond (2015), 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 Commissioner of Buildings is authorized to issue a building permit substantially in accordance with the Plans for the Special Use subject to the terms and conditions set forth in this ordinance. An application for the building permit shall be made within 730 calendar days following the date on which this amendatory ordinance becomes effective. If either the application for the building permit is not made within the time period stated in the previous sentence or the building permit terminates under any provision of the Virginia Statewide Building Code, this amendatory ordinance shall terminate and become null

and void, and Ordinance No. 2014-222-204, adopted November 10, 2014, shall govern the special use permit for the Property thereafter.

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

II. This amendatory ordinance shall be in force and effect upon adoption.

O & R Request

DATE: February 10, 2020

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor (Patron: Mayor, by Request)
(This is no way reflects a recommendation on behalf of the Mayor.)

THROUGH: Lenora G. Reid, Acting Chief Administrative Officer

THROUGH: Sharon L. Ebert, Deputy Chief Administrative Officer for Economic Development and Planning

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

RE: To amend Ord. No. 2018-328, adopted, January 14, 2019 which authorized the special use of the property known as 2319 Grove Avenue for the purpose of authorizing an expansion to an existing day nursery, to authorize further expansion of the existing day nursery, upon certain terms and conditions.

ORD. OR RES. No.

PURPOSE: To amend Ord. No. 2018-328, adopted, January 14, 2019 which authorized the special use of the property known as 2319 Grove Avenue for the purpose of authorizing an expansion to an existing day nursery, to authorize further expansion of the existing day nursery, upon certain terms and conditions.

REASON: The existing day nursery is considered a nonconforming use and any expansion of that use, including the proposed building addition, requires a special use permit. The applicant is requesting to amend an existing Special Use Permit which allowed for the expansion of an existing day nursery in order to change a feature requirement of the approved plans. The existing Special Use Permit was approved in 2019 for the purposes of expanding the nursery and to include a non-opaque railing on the roof of the approved addition. The current application to amend the existing Special Use Permit would allow for an opaque railing.

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 Commission at its April 6, 2020, meeting. A letter outlining the Commission's recommendation will be forwarded to City Council following that meeting.

BACKGROUND: The property is located in the R-6 Single-Family Attached Residential zoning district. The

property is currently improved by Ms. Babs' Nursery School, which is not a permitted use in the R-6 district. However, the existing day nursery use is deemed to be nonconforming. The applicant has already completed a two-story, 1,750 square foot addition that included a pre-kindergarten room, an infant nap room, and an infant playroom and a total number of employees of 11 and has increased the facility to 876 square feet of classroom space and accommodating an additional 10 students for a total occupancy of 85 students per day as well as an additional two (2) teachers. The current application to amend the existing Special Use Permit would legitimize an opaque railing that currently exists on an outdoor, roof-top classroom.

The City of Richmond's current Master Plan designates a future land use category for the subject property as Single Family Residential at Medium densities. Primary uses for this category "...are single family and two family dwellings, both detached and attached, at densities of 8 to 20 units per acre. Includes residential support uses such as schools, places of worship, neighborhood parks and recreation facilities, and limited public and semi public uses. Typical zoning classifications that may accommodate this land use category: R 5A, R 6 and R 7. (City of Richmond Master Plan, 133)

The current zoning for this property is R-6 (Single Family Attached Residential). All adjacent properties are located within the same R-6 Residential Zone.

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

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

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: \$300 application fee

DESIRED EFFECTIVE DATE: Upon Adoption

REQUESTED INTRODUCTION DATE: March 9, 2020

CITY COUNCIL PUBLIC HEARING DATE: April 13, 2020

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: None

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: City Planning Commission, April 6, 2020

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 ORD. OR RES.: Ordinance No. 2018-328

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Draft Ordinance, Application Form, Applicant's Report, Plans, Survey, Map

STAFF: Jonathan Brown, Senior Planner
Land Use Administration (Room 511) 646 5734

Key Issues:

Retain on Consent Agenda

Move to Regular Agenda

Refer Back to Committee

Remove from Council Agenda

Strike

Withdrawn

Continue to: