

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18309-A of Jubilee Housing, Inc., Motion for Minor Modification of Approved Plans in Order No. 18309, pursuant to § 3129 of the Zoning Regulations.

The original application was pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (70 infants and children and 25 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children under § 334.1, in the D/R-5-B District on the ground floor of premises 1474 Columbia Road, N.W. (Square 2669, Lot 825).

The application, as modified¹, is pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (48 children and 16 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children and two other community service center uses for preparing meals to be served off-site and for a program-based market pantry under § 334.1, in the D/R-5-B District on the ground floor of premises 1474 Columbia Road, N.W. (Square 2669, Lot 825).

HEARING DATE (Application No. 18309):	February 14, 2012
DECISION DATE (Application No. 18309):	February 14, 2012
FINAL ORDER ISSUANCE DATE (No. 18309):	February 27, 2012
MINOR MODIFICATION DECISION DATE:	November 10, 2015

SUMMARY ORDER ON REQUEST FOR MINOR MODIFICATION

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 and 26 in the record of Application No. 18309.)

¹ The application was amended by the modification of the approved plans by reducing the size of the area used for the child development center and consequently lowering the number of children and staff at the child development center and by repurposing that space to allow two new community service center uses: to wit, an area of approximately 1,470 square feet for the preparation of meals to be served offsite, and another area of approximately 102 square feet for a program-based market pantry as accessory to the meal preparation area. The caption was changed accordingly.

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BACKGROUND

On February 14, 2012, the Board of Zoning Adjustment (“Board” or “BZA”), by a vote of 5-0-0, approved the Applicant’s original request for special exception approval exception to allow a child development center (70 infants and children and 25 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children under § 334.1, in the D/R-5-B District. In BZA Order No. 18309 (the “Order”), the Board approved the Applicant’s original request, pursuant to 11 DCMR § 3104.1, for a special exception to allow a child development center (70 infants and children and 25 staff) under § 205, and a special exception to allow a community service center serving 30 high school aged children under § 334.1, in the D/R-5-B District on the ground floor of premises 1474 Columbia Road, N.W. (Square 2669, Lot 825). The Order approving the original request was issued on February 27, 2012. (Exhibit 1D.) That approval was conditioned on the Applicant carrying out the construction in accordance with the architectural drawings included in the application at Exhibit 29, Tab A in the record of Case No. 18309 to renovate the existing four-story building at the subject property with residential and community-serving uses and six other specific conditions, including a term of seven years. Order No. 18309 became effective on March 8, 2012.

MOTION FOR MINOR MODIFICATION OF APPROVED PLANS

On September 14, 2015, the Applicant submitted a request for a minor modification to the Board’s previous approval, in particular of the approved plans, in Application No. 18309 and also, pursuant to 11 DCMR § 3100.5, asked for a waiver of the two-year deadline under § 3129.3 for filing such a request. (See, Exhibits 1 and 3-3E in Case No. 18502-A.)

In Application No. 18309-A, the Applicant requested modification of the approved plans to reduce the size of the area used for the child development center and thereby lowering the number of children and staff at the child development center, and by repurposing that space to allow for two new community service center uses: to wit, an area of approximately 1,470 square feet for the preparation of meals to be served offsite, and another area of approximately 102 square feet for a program-based market pantry as accessory to the meal preparation area. The Applicant submitted the proposed revised plans showing these changes with Application No. 18309-A. (Exhibit 1B.)

The reason for the modification request was that after the original BZA approval, the nonprofit which was to operate the child development center at the subject property determined that it was no longer in their best interest to expand programming at the subject property. This determination occurred as the project was reaching final approval of certain financing commitments. Another nonprofit organization, Martha’s Table, was in need of space in the vicinity of their current property for an existing child development center, but there were not many suitable locations in that area. The subject property of this application would work from a size and layout perspective and given that the child development space at the subject property was available, the Applicant and Martha’s Table would be able to move forward on opening the

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child development center at the subject property quickly. The Applicant needed a new user for the child development space to be able to continue to offer the early childhood education programming. Martha's Table, which has a strong track record of successfully running such a program at another nearby location, is expected to be able to replicate its operations at the subject property and thus was considered an ideal tenant for the Applicant's project.

The financial viability of the project would be undermined if there was not a user located in the child development space. Martha's Table requires the co-location of the child development center and McKenna's Wagon/Market Pantry use and would only be interested in the project if it could bring in those uses, i.e. their child development center and the McKenna's Wagon/Market Pantry use. Additionally, the child development center space, as approved (70 children and 25 staff) would be too large for the operational needs of Martha's Table. Thus, the Applicant requires this modification to reduce the size of the child development center and allow for the co-location of other community serving uses at the subject property. The modification would allow for delivery of the originally planned early childhood education programming while also offering additional services to the community in the form of the food access initiatives of the McKenna's Wagon/Market Pantry use. (Exhibit 1A.)

Waiver of Two-Year Filing Deadline.

Subsection 3129.3 of the Zoning Regulations indicates that a request for minor modification "of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application." Order No. 18309 had a final date of February 27, 2012, and became effective on March 8, 2012. The motion for minor modification was filed beyond the two-year period cited in § 3129.3. As a result, the Applicant requested a waiver of that deadline, pursuant to 11 DCMR § 3100.5.

Previously, the Board granted special exception relief at the subject property under § 205 to allow a child development center use by Jubilee Jumpstart and under § 334.1 to allow community service uses by the Teen Renaissance Center and the Family Resource Center. In this application for minor modification, the Applicant is proposing to modify the original community serving uses within the same, existing terrace level footprint to allow for the use of these areas by a new tenant, Martha's Table, which would be using the space for two new community service uses, i.e. for the preparation of meals to be served offsite and a program-based market pantry.

By the time the two-year period following the approval of the Order expired on February 27, 2014, the Applicant and Martha's Table were not yet in discussions to use the property. The Applicant did not have an opportunity to work with Martha's Table, which precipitated this application, until after that date. Both the Applicant and Martha's Table would like to take advantage of the possibility of working together on behalf of the community while they have that opportunity. The Applicant asserts, and the Board agrees, that the additional 18 months deviation from February 27, 2014 would not undermine the intended effect of § 3129.3 or adversely affect any party, neighbor, or the community. The Project remains the same in concept, as approved, and continues to deliver affordable housing and a package of related community serving uses on

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the terrace level. Finding that the request would simply shift some of the child development center use area to community service center uses, both of which are approved use categories at the site, the Board granted the waiver. The Board found that the waiver was justified, as the need to modify the plans stems from a change in tenants that occurred after the project was approved. The waiver would not prejudice the rights of any party and is not prohibited by law.

Determination That the Modification Was Minor.

Subsection 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.) The Board found that no material facts upon which the Board had based its original approval of the application were changed by this request to shift some of the child development center use area to community service center uses, both of which are approved use categories at the site. The Board determined that the modification is minor, does not require a hearing, and that the change was in keeping with the intent of the original application.

The Merits of the Minor Modification of Approved Plans.

The Applicant's request for a minor modification of Order No. 18309 complies with 11 DCMR § 3129. Subsection 3129.2 states that "[t]he Board shall consider requests to approve minor modifications to plans approved by the Board, as set forth in §§ 3125.7 and 3125.8. The request shall be in writing, shall state specifically the modifications requested and the reasons therefore and include a copy of the plans for which approval is now requested." The Applicant's request for minor modification met all of these requirements. The Board also found that the addition of the new tenant, Martha's Table, meets the special exception requirements of §§ 334.2 – 334.5 of the Zoning Regulations.

Pursuant to § 3129.4, all requests for minor modifications of plans shall be served on all other parties to the original application and those parties are allowed to file comments within 10 days of the filed request for minor modification. The Applicant provided proper and timely notice of the request for minor modification to the other parties to the original application, including Advisory Neighborhood Commission ("ANC") 1A and the Single Member District ANC 1A03 as well as the Office of Planning ("OP") and the District Department of Transportation ("DDOT").

The site of this application is located within the jurisdiction of ANC 1A, which is automatically a party to this application. An ANC report dated October 16, 2015, was submitted to the record, recommending approval of the request for minor modification to Order No. 18309 and citing no concerns with the proposed modification. The ANC's report stated that at a regularly scheduled and properly noticed meeting on October 14, 2015, at which a quorum was present, the ANC voted (11-0-0) in support of the modification application. (Exhibit 3.)

The Office of Planning submitted a timely report dated November 3, 2015, recommending approval of the modification request subject to seven amended conditions and the waiver of the

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requirement under § 3129.3 that a minor modification be filed within two years after the date of the Board's Order is issued approving the original application. (Exhibit 4.)

DDOT submitted a timely report dated November 3, 2015, stating that it had no objection to the granting of the medication. (Exhibit 5.)

The only parties to the case were the ANC and the Applicant. No parties appeared at the public meeting in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for minor modification of approval, including approved plans, in Case No. 18309. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a minor modification to the original approval and plans in Case No. 18309, the Applicant has met its burden of proof under 11 DCMR § 3129, that the minor modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification and amendment of the Board's approval in Application No. 18309 is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED PLANS IN EXHIBIT 1B AND SUBJECT TO THE FOLLOWING REVISED CONDITIONS:**

1. Approval shall be for a period of **SEVEN (7) YEARS** commencing on the issuance of the first certificate of occupancy for the child development center or community service center uses at the property.
2. There shall be a maximum of 48 children and 16 staff at the child development center at any one time during its core hours of 7:00 AM to 6:00 PM. There shall be a maximum of 25 children and eight staff at the child development center at any one time from 6:00 PM to 7:00 AM, provided that there shall be no use of the outdoor play area after dark.
3. There shall be a maximum of 30 students and four staff at the Teen Renaissance Center space at any one time from 3:00 PM to 10:00 PM.
4. The Family Resource Center shall be used from 9:00 AM to 6:00 PM, and shall also be permitted to operate until 9:00 PM a maximum of three times per week.

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5. The McKenna's Wagon and Market Pantry shall operate between the hours of 10:00 AM to 6:45 PM and 9:00 AM to 5:00 PM respectively. There shall be a maximum of 13 volunteers and one staff at any one time with a maximum 20 program-enrolled visitors per day to the Market Pantry.
6. The Applicant shall implement the Traffic Management Plan, as provided.
7. The Applicant shall make best efforts to work with DDOT to locate a bike rack adjacent to the property on 15th Street, if permitted through the historic review process.

In all other respects, Order No. 18309 remains unchanged.

VOTE ON ORIGINAL APPLICATION ON FEBRUARY 14, 2012: 5-0-0

(Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Michael G. Turnbull to Approve.)

VOTE ON MODIFICATION OF APPROVAL: 4-0-1

(Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle (by absentee vote), and Peter G. May to Approve; one Board seat vacant.)

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: November 17, 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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, 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 BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.