

**BEFORE THE BOARD OF ZONING ADJUSTMENT OF
THE DISTRICT OF COLUMBIA**

Application of Jubilee Housing, Inc.

BZA Application No.
Hearing Date:
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STATEMENT OF THE APPLICANT

This is the application of Jubilee Housing, Inc. ("**Jubilee**" or "**Applicant**") for a special exception to allow the continued use of its partner non-profit, Jubilee JumpStart. Jubilee JumpStart is a child development center in the R-5-B Zone District that was granted special exception relief pursuant to BZA Order No. 17456 ("**Order**") as well variance relief from the off-street parking regulations. This Order approved a child development center at 2525 Ontario Road, NW (Square 2565, Lot 805) ("**Property**") for a period of three years. Jubilee now returns to the Board just before the third anniversary of the issuance of the certificate of occupancy for the JumpStart program and seeks permanent approval of the child development center as well as a modest increase in the number of children permitted on-site.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment (the "**BZA**" or the "**Board**") approve a special exception for the continued use of a child development center with a maximum enrollment of 150 children, and a maximum of 65 children on-site at any one time, in the R-5-B Zone District pursuant to District of Columbia Municipal Regulations Sections 3104.1 and 205. The Applicant also requests an area variance pursuant to Section 3103.2 from the off-street parking requirements of Section 2101.1. The Property is located at 2525 Ontario Road (Square 2565, Lot 805) (see Exhibit A), and is zoned R-5-B (see Exhibit B).

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to sections 3103.2 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.2, 3104.1).

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18348
EXHIBIT NO. 3

III. BACKGROUND

A. The Applicant

Jubilee is a nonprofit organization that has been serving residents of Washington, D.C. for over thirty-five years by providing affordable housing and supportive services to lower-income residents of the Columbia Heights, Reed-Cooke and Adams Morgan neighborhoods. This faith based, non-profit organization was initially founded in 1973 to provide affordable housing and supportive services to economically disadvantaged residents of the Adams Morgan neighborhood of Washington, DC. Today Jubilee has expanded considerably and serves more than 700 individuals and families and currently owns ten properties in the Adams Morgan and Columbia Heights neighborhoods. Jubilee has been a model for programs around the country seeking effective responses to the urban affordable housing crisis. The vision and purpose of Jubilee Housing is about more than providing housing, it is about making it possible for members of the Jubilee community to become their best selves in an atmosphere of supportive community.

A. Description of the Property

Ontario Court (the “**Building**”) is a three-story building constructed in 1922. There are twenty-seven units in the Building and the majority of units are available only to households with an income no greater than 60% of the Area Median Income. The Building has been operated by Jubilee since 1979.

The Property is bound by Ontario Road to the west, and private properties to the south, north and east. The Property is “land-locked” and does not have alley access. The Building consists of a “U” shape with an open courtyard in the center, facing Ontario Road. There is a significant grade difference between the face of the Building and Ontario Road, as can be seen in the photographs attached as Exhibit F.

B. Description of the Project

Jubilee JumpStart is a partner non-profit of Jubilee Housing and provides childcare and development programs for infants, toddlers, and preschoolers. It operates on the lower level of the Building and includes an outdoor play area along the northern and eastern sides of the Property. The program occupies approximately 4,000 square feet of interior space and 2,300 square feet of exterior space. It currently is approved to serve 50 children at any one time with a maximum enrollment of 150 students.

The program currently serves infants as young as six weeks old up to pre-kindergarten children as old as 5 years. The core program runs between 7 am and 6 pm. In connection with its initial application, the Board approved extended hours that would allow evening care between 6 pm and 12 am and overnight care between 12 am and 7 am. The extended hour programs were developed in response to market studies that indicate a need for care during non-traditional hours exists in this community. Jubilee will implement the extended hours if the need for off-peak hours is present.¹

The JumpStart program will give priority to the children of residents in Jubilee Housing facilities and related Jubilee Housing Limited Partnerships, all within walking distance of the Ontario Court. Approximately 75% of its current children are residents of Jubilee Housing and the remaining 25% generally reside within the neighborhood. The majority of the families utilizing the JumpStart program walk to the site, minimizing traffic to and from the Property. JumpStart is currently in the process of reserving two “loading zone” spaces at the front of the Building for use by parents dropping or picking their children up.

JumpStart intends to employ a staff of twenty-one (21) individuals for this development center, which is consistent with DC regulations regarding child development facilities. See 29

¹ In the event the extended hours are implemented, Jubilee may expand the age groups that the JumpStart program serves; however, the program would only serve individuals under the age of 15.

DCMR § 316.1. Approximately 75% of JumpStart's current staff walks or takes public transportation to work. Jubilee believes that this statistic will hold true for the continued operations of the child development center; thus, Jubilee does not anticipate a problem with parking. Nevertheless, it does make two tandem spaces at the Jubilee Festival Center on Mozart Place available to staff members for parking.

The introduction of a child development center with 21 staff members generates a parking requirement of 5 spaces. The Applicant is requesting variance relief from the requirement to provide these parking spaces because there are currently no parking spaces provided on the Property. The Applicant, however, is working with DDOT to reserve two spaces marked "No Parking - Loading Zone" in the front of the Building to provide an area for dropping off and picking up children, if necessary. As noted above, Jubilee also provides access to parking for employees a few blocks away from the Property.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER SECTION 3104.1 OF THE ZONING REGULATIONS

The Applicant is seeking a special exception under Section 205 of the Zoning Regulations for approval for the use of a child development center on the Property. A child development center for more than sixteen children is allowed in the R-5-B Zone District by special exception pursuant to 11 DCMR Section 205. Section 205 requires the applicant to demonstrate the following: (1) it is capable of meeting all applicable code and licensing requirements; (2) it is located and designed to create no objectionable traffic conditions and no unsafe condition for picking up and dropping off children; (3) it provides sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors; (4) it shall be located and designed so that there will be no objectionable impacts on adjacent properties due to noise, activity, visual, or other objectionable conditions; (5) any off-site play area shall be

located so as not to result in endangerment to the children in traveling between the play area and the center; and (6) if another child development center is located in a square or within 1,000 feet of the proposed center, then the cumulative effect of the centers will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

A. Jubilee is Capable of Meeting the Applicable Code and Licensing Requirements.

The licensing requirements for a child development center are enumerated in Title 29 of the D. C. Municipal Regulations. Jubilee and JumpStart will satisfy each of these requirements and any other applicable codes and regulations.

B. Jubilee will not Create Objectionable Traffic Conditions or Unsafe Conditions for Picking-up and Dropping-off Children.

Under Section 205.3, Jubilee must demonstrate that the child development center is located and designed to create no objectionable traffic conditions and no unsafe condition for picking up and dropping off children. Most of the children who participate in the Jubilee JumpStart program live in other Jubilee apartment buildings or in the immediate neighborhood and walk to the center under the supervision of their parents or guardian. Nevertheless, Jubilee is working with DDOT to provide two loading spaces in front of the Building to serve as a drop-off and pick-up area for children who are driven to the site. Fortunately, the facility is also conveniently located along several public transportation routes, making it highly accessible from other neighborhoods in the District. Traditionally there have not been a significant number of individuals driving to the center and Jubilee does not expect this to change with the modest increase in its enrollment.

C. Jubilee Will Not Create Adverse Parking Impacts.

Section 205.4 requires that Jubilee provide sufficient off-street parking spaces to meet the

reasonable needs of teachers, other employees, and visitors. As discussed above, Jubilee is requesting variance relief from the off-street parking requirements. Jubilee anticipates that approximately 75% of the students and staff will walk to work or take public transportation; thus, most of the employee and staff traffic to the center will be pedestrian traffic and not vehicular in nature. Nevertheless, Jubilee provides access to parking for two employees in tandem spaces at its Festival Center a few blocks away on Mozart Place.

D. Jubilee will not Create Objectionable Impacts on Adjacent Properties.

Section 205.5 provides:

The center, including any outdoor play space provides, shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual, or other objectionable conditions. 11 DCMR § 205.5.

The proposed child development center does not create an objectionable impact on adjacent properties. The Property is located in close proximity to the commercial area of Columbia Road, which generates a significant amount of noise and pedestrian traffic that overpowers any noise generated on the Property. Nevertheless, Jubilee has taken care to minimize its impact on its neighbors. JumpStart provides two outdoor play periods for the children during approximately eight months of the year. The first play period is between 9:45 and 11:45 and the second is between 3:30 and 5:30. The morning play period is typically held off-site at a neighborhood playground while the afternoon play period takes place in the play area along the sides and at the rear of the Property. Accordingly, on average, children are typically only outside on the Property for two hours per day, as weather permits. JumpStart only allows a maximum of eighteen children outside at any one time, which limits the effect of any noise that the children may generate. Further, in coordination with its Beverly Court neighbors to the north, Jubilee has constructed a new eight foot high fence with an overhanging trellis between the Building and Beverly Court, to

further minimize any impact of the children.

E. The Board May Require Special Treatment in the Way of Design, Screening of Buildings, Planting and Parking Areas, Signs or as Otherwise Necessary

Jubilee is providing landscaping as depicted on the attached plans; however, given the limited space available, Jubilee dedicates the majority of the outdoor space to play area. Nevertheless, a fence does surround the entirety of the Property, with a brand new fence having been constructed along the northern property line between the JumpStart play area and the Beverly Court Cooperative. Jubilee is happy to work with the Board in the event it believes additional treatment is necessary.

F. The Off-Site Play Areas Used by Jubilee will not Endanger the Children in Traveling between the Play Area and the Center.

Under Section 205.7, "any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between the play area and the center itself." Although a play area will be provided on-site, the children also use neighborhood playgrounds such as the Fuller Street Playground, the Kalorama Park, Walter Pierce Park and the H.D. Cooke Elementary School Playground to diversify the scenery and the equipment the children use. The children also occasionally visit sites in the neighborhood such as grocery stores, as educational experiences. The children are well supervised as they travel between Ontario Court and the off-site play areas. JumpStart does not typically take more than 16 children at a time off-site and will provide at least three adults to supervise the transport of the children.

G. Jubilee will not Cause a Cumulative Adverse Effect on the Neighborhood.

Under Section 205.8, the BZA may approve more than one child development center in a square or within 1,000 feet of another child development center only when the Board finds that

the cumulative effect of the facilities will not have an adverse impact on the neighborhood. The Applicant is not aware of any other child development centers in the same Square as the Property. Jubilee Housing does, however, operate three child development centers in Jubilee buildings located at 1630 and 1650 Fuller Streets and 1631 Euclid Street. The Applicant does not believe that the introduction of another child development center in this neighborhood will have an adverse impact. The vast majority of children and parents that use these facilities live in this neighborhood and come to these facilities by foot or by public transportation. The high number of centers only bolsters the fact that these services are desperately needed in the community. All of these facilities are needed by residents of this neighborhood and are universally seen as a benefit to the neighborhood. There is no adverse impact on the Adams-Morgan/Reed Cooke neighborhood caused by the cumulative effect of all of these facilities.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR AREA VARIANCES UNDER SECTION 3103.2 OF THE ZONING REGULATIONS

The burden of proof for an area variance is well established. The applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition; (ii) that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (iii) that the granting of the variance will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan. *See, e.g., Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In examining the first two elements, the BZA may apply a more flexible standard for determining difficulty when a public service or nonprofit entity is the applicant, such as Jubilee. *See National Black Child Development Institute v. D.C. Board of Zoning Adjustment*, 483 A.2d 687, 690 (D.C. 1984); *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1098 (D.C. 1979). The D.C. Court of Appeals has applied the more flexible standard to area

variances as well as use variances. *See Draude v. D.C. Board of Zoning Adjustment*, 582 A.2d 949, 956 (D.C. 1990). As set forth below, the Applicant meets the three-part test for the requested parking variance.

A. The Property is Affected by an Exceptional Situation or Condition

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "property generally includes the permanent structures existing on the land." *Id.* at 293-294. Indeed, the Court repeatedly has rejected the idea that the exceptional situation and practical difficulty justifying a variance must arise from the physical aspects of the land. *See National Black Child Development*, 483 A.2d at 690; *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979). Instead, the BZA may "weigh more fully the equities in an individual case." *National Black Child Development*, 483 A.2d at 690. Further, the characterization of the use as a public service is significant to the determination of uniqueness. In *Monaco*, the D.C. Court of Appeals held:

While a commercial user before the BZA might not be able to establish uniqueness in a particular site's exceptional profit-making potential, we consider that the BZA may be more flexible when it assesses a non-profit organization As Professor Anderson has observed, public need for the use is an important factor in granting or denying a variance"

Monaco, 407 A.2d at 1098.

Ontario Court is affected by an exceptional situation because it is an existing structure that was constructed in 1922, well before the Zoning Regulations became effective. It is irregularly shaped and occupies a large portion of the lot on which it is located. As noted previously, the Property does not have alley access. Therefore, in order for the Applicant to comply with the parking requirements, it would need to eliminate the courtyard between each

arm of the "U" and use it for parking, which would destroy the aesthetic appeal of the Building. The Applicant has looked into the feasibility of such work and concluded that not only would it adversely affect the appearance of the Building, but it was also cost prohibitive because of the significant grade change between the Building and Ontario Road. Finally, placing parking spaces in the front yard is contrary to Section 2116.2 of the Zoning Regulations, which does not permit spaces in the front of buildings. In sum, the slope and the small size of the front yard precludes the ability to provide parking spaces in the front of the Building (as does the Zoning Regulations). Likewise, there is no potential for parking at the rear of the building because there is no alley access and the side yards are too narrow to allow access directly from Ontario Road.

Finally, the Applicant is also unique because it is a nonprofit corporation which provides a significant public service to the Adams-Morgan neighborhood and the District. It not only provides affordable housing in Adams-Morgan for low-income families but it provides those families with a multitude of services, including educational enrichment and guidance for the children. Accordingly, under *Monaco*, the Board may apply a more flexible standard to the determination of uniqueness for the Property.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

To satisfy the second element for an area variance standard, the Applicant must demonstrate "practical difficulty." The D.C. Court of Appeals has established a two part test for determining whether an applicant has met its burden of proof. The applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. The Court of Appeals has held that the "nature and extent of the burden which will warrant an area

variance is best left to the facts and circumstances of each particular case." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for [the] BZA's consideration." *Id.* Some other factors that the BZA may consider are "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.* The BZA also may consider the needs of a public service organization that "has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership" *Draude*, 582 A.2d at 956.

The BZA may grant a variance from the off-street parking requirements when providing the necessary parking would be cost prohibitive and would dramatically decrease the facilities that an applicant would be able to provide. *Association for Preservation of 1700 Block of N Street, N.W. v. D.C. Board of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978) (approving a variance from the off-street parking requirements for the YMCA). In the present application, it would be unnecessarily burdensome for Jubilee to provide parking for the Building. The Building is about 90 years old and the lot on which it is located simply does not provide sufficient area for the creation of parking spaces. There is no alley access to the Building; the only street frontage it has is on Ontario Road. Thus, as demonstrated by the site plan included in Exhibit C the only possible location for the parking spaces on Lot 805 would be in the courtyard. Even then, this would not satisfy the need for five spaces, and providing spaces in front of the building would be contrary to the Zoning Regulations and would reduce the aesthetic appeal of the Building dramatically.

From an urban design perspective, any parking spaces in the courtyard would be inappropriate and would detract from the Building's inviting appearance. Moreover, the cost of

excavating the courtyard, given the grade change between the street and the Building is cost prohibitive, particularly for a nonprofit entity. Therefore, the only way for the Applicant to comply with the parking requirement for the Building would be to demolish at least a portion of the Building to allow access from Ontario Road to the rear of the Property. Such demolition would result in the loss of affordable housing units, which is contrary to the stated goals of the District of Columbia Government, Zoning Commission, Office of Planning and the goals of the Jubilee. The loss of the rear yard for parking would further mean the loss of the JumpStart program as it would no longer be able to satisfy the area requirements set forth by the Department of Health for child development centers. Accordingly, the Building's footprint on the lot creates a practical difficulty in trying to comply with the off-street parking requirements.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. The requested parking variance can be granted without causing any adverse impact on the availability of parking in the neighborhood. The majority of the children enrolled in the program will be living in Jubilee Housing facilities and any additional children will likely live in the adjacent neighborhoods. The Building is also located near the Columbia Heights and Woodley Park Metro stations and along the 42 Metrobus route, making it easily accessible for the program staff. Moreover, the Applicant is working with the District Department of Transportation in reserving two spaces to be marked "No Parking - Loading Zone" to allow for any children who may be dropped off and picked up at the facility to do so without causing any traffic problems. Because of these accommodations, Jubilee does not anticipate a problem with parking.

VI. CONDITIONS OF APPROVAL

Pursuant to BZA Order No. 17456, the Jubilee JumpStart program was approved pursuant to the conditions stated below. Jubilee proposes modifications to these conditions as noted in italics below:

1. Approval shall be for THREE (3) YEARS. *Jubilee is seeking permanent approval for the child development center. Jubilee needs certainty that the center will be running on a permanent basis in order to finance improvements and to attract donations to the program. Any uncertainty about the permanency of the program creates issues for lenders as well as donors.*
2. There shall be a maximum of 50 children at the center at any one time, with a maximum total enrollment of 150 students. *Jubilee and JumpStart propose to increase the number of permitted children at any one time to 65 but will maintain its maximum enrollment at 150 children. This is a modest increase and will provide greater flexibility to better fill the childcare needs of the community.*
3. The maximum number of staff shall be 16. *Jubilee is proposing a maximum staff of 21 to adequately care for the children.*
4. The Applicant shall maintain the trash area on the grounds of the Ontario House. The trash area shall be walled on three sides and gated on the fourth. The walls and floor shall be concrete and/or masonry with an area drain for ease of cleaning. At the trash area, a concrete slab, on grade shall be provided to allow for daily cleaning of the area. *Jubilee is not proposing any changes to this condition.*
5. Low mounted “yard lights” shall be provided to illuminate the grounds of the property and security of the building. These lights may be supplemented with low walkway

lights for special effects. Each door opening shall have a glowing light for security. *Jubilee proposes making the Board's approval contingent on the implementation of the plan attached as Exhibit C. Jubilee has modified its landscaping based on its program needs, although it does, and will continue to, provide the security lighting at each of the door openings.*

6. At the entry to the building, poured in place, scored concrete shall provide an impervious surface for the day to day entry walk from the street to the facility. In the play area, wood chips of soft water permeable surface shall be provided. At the planter box, concrete pavers set in sand shall be provided around the sand area. Along the north side of the property, the tricycle area shall have a recycled rubber paving material typically found in children's play areas. *Jubilee proposes making the Board's approval contingent on the implementation of the plan attached as Exhibit C. Jubilee has modified its outdoor program since the initial approval such that it no longer has a sand area or a tricycle area.*

VII. EXHIBITS

- Exhibit A:** Application forms and agent authorization letter.
- Exhibit B:** A copy of an applicable portion of the Zoning Map.
- Exhibit C:** Plans of the project.
- Exhibit D:** Plats depicting the property.
- Exhibit E:** Property owner list.
- Exhibit F:** Photographs of the Property and Program.
- Exhibit G:** JumpStart Certificate of Occupancy.
- Exhibit H:** BZA Order No. 17456

VIII. CONCLUSION

Jubilee and JumpStart appreciate the Board's consideration of this application and looks forward to continuing to provide this important service to the children of lower-income families in the D.C. community. It asks that its request for special exception relief to continue the operation of the child development center with a modest increase in the number of children and on a permanent basis be granted, as well as its request for variance relief from the parking requirements.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Christine", with a stylized flourish at the end.

Christine A. Roddy

Certificate of Service

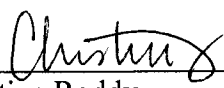
The undersigned hereby certifies that copies of the foregoing document was delivered by first-class mail or hand delivery to the following addresses on January 25, 2012.

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