

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18348 of Jubilee Housing, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the off-street parking requirements under § 2101.1, and a special exception to allow a Child Development Center (150 children and 21 staff persons) under § 205, in the R-5-B District at premises 2525 Ontario Road, N.W. (Square 2565, Lot 805).¹

HEARING DATE: May 22, 2012

DECISION DATE: June 26, 2012

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 1C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1C, which is automatically a party to this application. ANC 1C filed a letter report, dated April 10, 2012, which indicated that at a properly noticed, regularly scheduled public meeting held on April 4, 2012, with a quorum of seven of eight Commissioners present, the ANC voted (voice vote) to support the application. (Exhibit 29.)

The Office of Planning (“OP”) submitted a timely report recommending approval of the application, subject to five conditions.² (Exhibit 35.) By its letter, dated February 14, 2012, the Office of State Superintendent of Education recommended that the application be approved. (Exhibit 23.) The District Department of Transportation (“DDOT”) also submitted a letter dated

¹ The Board previously approved the Applicant’s use at these premises in BZA Case No. 17456, subject to six conditions, including a term of three years. (Exhibit 13.)

² The conditions OP recommended were based on the previous approval and on the improvements made to the site since the previous application was granted for this use. (Exhibit 35.)

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EXHIBIT NO. 45

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May 15, 2012, indicating that DDOT recommended approval of the Applicant's request for the variance and special exception. In addition, DDOT recommended that the Applicant employ an improved child drop-off and pick-up operation to ensure that vehicle impacts are minimized on Ontario Road. DDOT also suggested that the Applicant follow transportation demand management ("TDM") options and employ some form of performance monitoring to ensure a continuous and appropriate response to traffic management. (Exhibit 34.)

Four letters of support for the application from nearby neighbors were submitted for the record. (Exhibit 39.)

A party status application in opposition was submitted by John Taht on behalf of the Board of Directors of the Beverly Court Cooperative, 1736 Columbia Avenue, N.W. (Exhibit 31.) At the hearing on May 22, 2012, the Board granted party status to Beverly Court Cooperative as a party in opposition. The primary issue raised by the party in opposition was the high volume of noise that occurred daily in the Applicant's outdoor play area, which the Beverly Court Cooperative's residents who live on the side of the building that borders the Applicant's child development center are unable to avoid. (Exhibit 31.)

On May 22, 2012, the Board completed public testimony, closed the record but for supplemental information from the parties, and scheduled a decision meeting for June 26, 2012. The Board asked the Applicant to meet with the party-opponent to discuss their concerns regarding noise generated by the child development center. As requested, the Applicant did meet with Beverly Court Cooperative residents at least twice and negotiated an agreement under which the Applicant will implement certain practices and procedures so as to minimize the noise generated by the Applicant's center in exchange for the cooperative residents' support of the center's operations to continue on a permanent basis. The Applicant submitted a post-hearing statement that outlined the agreement that the child development center and its neighbors at Beverly Court Cooperative reached ("Agreement"). (Exhibit 40.) The Applicant submitted a signed copy of the Agreement between the Applicant and party-opponent for the record. (Exhibit 41.) In addition, the Applicant submitted a revised site plan. (Exhibit 36.)

Per the Agreement entered into by the parties, Mr. That, on behalf of the Beverly Court Cooperative, submitted a letter dated June 20, 2012, stating that the party-opponent now supported the application, including the child care center's operation on a permanent basis under the terms of the Agreement the cooperative residents had reached with the Applicant that was signed on June 19, 2012. (Exhibit 42.) While the letter tacitly withdrew the party opposition and the Board in its deliberations acknowledged that it had, Mr. That also submitted an explicit withdrawal of the party opposition for the record. (Exhibit 43.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for a variance from the strict application of the off-street parking requirements under § 2101.1. With the withdrawal of opposition from the party-opponent, no parties appeared at the public hearing in

opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for an area variance under § 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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 pursuant to § 3104.1, for a special exception under § 205. With the withdrawal of opposition from the party-opponent, no parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 205 that the requested relief 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.

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. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED WITH THE FOLLOWING CONDITIONS**:

1. There shall be a maximum of 65 children at the center at any one time, with a maximum enrollment of 150 students.
2. The maximum number of staff at any one time shall be 21.
3. 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 floors shall be concrete and/or masonry with an area drain for ease of cleaning. An on-grade concrete slab shall be provided within the trash area to allow for daily cleaning.
4. Wood chips or a soft permeable surface shall be provided in the play area, as depicted in the landscape plan.

5. A wooden fence topped with a trellis shall be maintained along the eastern property to contain noise from and reduce visibility of the outdoor play area.
6. The Applicant shall provide dense plantings along the fence on the eastern lot line, which is shared between Jubilee and the Beverly Court Cooperative. The plantings shall consist of one of or a mix of the following plant species:
 - a. *Viburnum pragnense* – Prague Viburnum
 - b. *Euonymus kiautschovicus* “Manhattan” – Manhattan Euonymus
 - c. *Prunus laurocerasus schipkaensis* – Schip (“skip”) Laurel

The plantings shall be provided within four weeks of the effective date of this Order.

7. The Applicant shall establish procedures for the use of the outdoor space that:
 - a. Prohibits the use of hard-wheeled toys on hard surfaces that are not smooth. This subsection seeks to eliminate noise generated when wheeled toys are used on bumpy pavers.
 - b. Limits the levels of children crying in the rear yard by assisting in the cessation of the crying or by bringing the child indoors temporarily.
 - c. Prohibits any adults, including instructors and parents, from raising their voice while in the rear yard.
8. The Applicant shall limit use of the rear yard to a maximum of six hours per day, and the Applicant will make a good faith effort to use the rear yard no more than four hours on most days.
9. The Applicant shall meet with the Jubilee Neighbors, which include the Beverly Court Cooperative, on a quarterly basis to hear any comments, complaints, or suggestions they may have with respect to the noise abatement in the Applicant’s rear yard. Based on complaints and suggestions by the Jubilee Neighbors, the Applicant shall be willing to add reasonable new noise abatement procedures to those specified in subsection (b) in the Agreement in Exhibit 41 of the record.

VOTE: **5-0-0** (Nicole C. Sorg, Anthony J. Hood, Lloyd J. Jordan, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle to APPROVE.)

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

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

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: **JUN 29 2012**

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 § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.