

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16292 of Urban City Foods, pursuant to 11 DCMR 3107.2 for a variance from the provisions of Paragraph 701.4(q) to allow a fast food, drive-in restaurant in a C-1 District at premises 2125 Alabama Avenue, S.E. (Square 5892, Lot 124).

**HEARING DATE:** December 17, 1997  
**DECISION DATE:** December 17, 1997 (Bench Decision)

**ORDER**

**SUMMARY OF EVIDENCE:**

The property which is the subject of this application is located at 2125 Alabama Avenue, S.E. and it is zoned C-1. The applicant is requesting a use variance to establish a Burger King Express restaurant with drive-through. No seating will be provided inside.

**Issues and Arguments**

**1. Whether there exists a unique or exceptional situation or condition related to the property which creates an undue hardship for the owners in complying with the Zoning Regulations?**

The applicant stated that the property is currently vacant. The last use of the site was that of a gasoline station. As a result of the gas station use, the soil and water have been contaminated. The property has also been cited for rodent infestation.

The applicant stated that the property is insured for indemnity because of the contamination. However, the indemnity only applies to one purchase of the property. Subsequent purchases are not covered. The applicant testified that other potential users have been unwilling to purchase the property because of the problems just enumerated. These conditions create an undue hardship for the owner in its efforts to sell the property for a permitted use.

**2. Whether allowing the use would be of substantial detriment to the public good?**

The applicant testified that the neighborhood would be improved by the proposal in a number of ways. First, La-Van Hawkins, Urban City Foods Burger King is well known for community partnerships in cities all over America. The proposed facility would provide at least 100 jobs directly to the surrounding area, training programs related to the proposed use and on-the-spot hiring at the local church. Secondly, the applicant stated that it would improve the property by cleaning up the contamination, removing bulk items and debris, exterminating for rodents and insects and landscaping the surrounding area.

Two neighbors testified at the hearing in opposition to the application. The first neighbor, who resides at 2007 Savannah Place, S.E., testified that while she does not want the negative conditions that may result from the operation of a fast food restaurant at the site, she was willing to work with the applicant to agree on conditions that would mitigate the adverse impacts. She raised issues related to trash in the area, loitering, parking, hours of operation and coupons for senior citizens. She pointed out that she and the applicant were able to reach agreeable terms on most of the issues.

The second neighbor to testify in opposition to the application resides at 2031 Alabama Avenue, S.E. She raised the following issues:

- A. The community does not need a fast food restaurant because of the negative impacts that such uses bring;
- B. There is an Eddie Leonard's shop nearby and the patrons drop trash on the premises and near the subject site;
- C. There are other establishments nearby and the patrons double-park their cars and park in the alley near her house. The establishments also cause an increase in the pedestrian and vehicular traffic in the area. Noise is a problem because of loud radios playing in the cars; and
- D. The facilities operate in such a way as to promote rodent infestation.

Finally, she stated that notice was inadequate because none was sent to her home and initially the orange sign was posted too far away to be readable.

Responding to the concerns of opponents, the applicant stated that all of the conditions described are current problems to which the applicant plans to provide solutions. The applicant testified that the community needs the jobs that the proposal would provide and the community would benefit from the business's presence. The applicant pointed out that this use could help reduce the number of cars waiting 15 minutes or so to get food (at other establishments) because at the Burger King, patrons can be served in about 1 ½ minutes.

The applicant agreed to operate the facility Monday through Thursday 7:00 a.m. – 12:00 a.m., Fridays and Saturdays, 7:00 a.m. to 2:00 a.m., and Sundays 8:00 a.m. to 11:00 p.m.

On the issues of parking and loitering, the applicant agreed to have security patrol the area every 20 minutes to have patrons disperse from the site. The applicant maintained that the presence of security would help the local police. On the issue of trash, the applicant agreed to pick up trash in a two-block radius around the site all day.

With regard to the notice issue raised by one of the opponents, the applicant's representative testified that he moved the sign as soon as he became aware that it was not readable from the street.

3. **Whether the proposed use will impair the intent purpose and integrity of the zone plan?**

The applicant maintained that the zone plan would not be impaired because the proposed use is less detrimental than some uses allowed as a matter-of-right. Further, the conditions under which the applicant would operate would mitigate any negative impacts on the zone plan.

Several letters and petitions in support of the application were entered into the record.

Advisory Neighborhood Commission 8B did not submit a report or appear at the hearing.

**FINDINGS OF FACT:**

Based on the evidence of record, the Board finds as follows:

1. The applicant cannot find a purchaser for the property because of the contamination of the soil and water and because of the inability to insure the site beyond the first purchaser.
2. The agreement offered by the applicant and an opposing witness adequately address the relevant issues raised by the opposition.

**CONCLUSIONS OF LAW AND OPINION:**

Based on the evidence of record, the Board concludes that the applicant is seeking a use variance. Granting such a variance requires a showing through substantial evidence that requiring strict compliance with the Zoning Regulations will create an undue hardship upon the owner in its efforts to make reasonable use of the property. This hardship must arise out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The applicant must demonstrate that the property cannot be used for any purpose for which it is zoned because of some physical or other extraordinary condition related to the property itself. In addition, the Board must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board is of the opinion that the applicant has met this burden of proof. The Board concludes that the contamination of the site is an exceptional situation which creates an undue hardship for the owner in making use of the site in compliance with the Zoning Regulations. The Board concludes that with the conditions imposed in this order, the use will not be of substantial detriment to the public good, nor will it impair the intent, purpose and integrity of the zone plan.

The ANC did not submit a report to which “great weight” could be given. Finally, the Board concludes that notice was adequate given that the other required forms of notice had been perfected. Accordingly, it is hereby **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The hours of operation shall be Monday through Thursday 7:00 a.m. to 12:00 a.m., Fridays and Saturdays 7:00 a.m. to 2:00 a.m., and Sundays 8:00 a.m. to 11:00 p.m.



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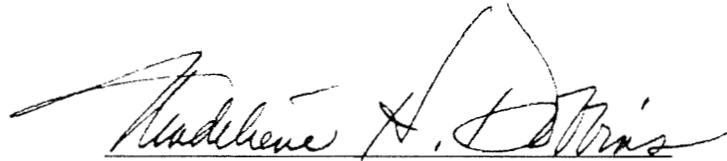


**BZA APPLICATION NO. 16292**

As Director of the Board of Zoning Adjustment, I hereby certify and attest that on FEB 19 1998 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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**MADELIENE H. DOBBINS**  
Director

**DATE:** FEB 19 1998