

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17501 of Cynthia Jones on behalf of Jones & Araque, L.L.C., pursuant to 11 DCMR § 3104.1, for a special exception to establish a fast food restaurant under § 733, in the C-2-A district at premise 605 2nd Street, N.E. (Square 753, Lot 94).

HEARING DATE: July 25, 2006
DECISION DATE: September 19, 2006

DECISION AND ORDER

This application was submitted on March 16, 2006 by Cynthia Jones (“Applicant”), the owner of the property that is the subject of the application (“subject property”). The application, submitted on behalf of Jones & Araque, L.L.C., requests a special exception to operate a fast food restaurant in a C-2-A zone district, pursuant to § 733 of the Zoning Regulations.

The Board of Zoning Adjustment (“Board”) held and completed a hearing on the application on July 25, 2006, but kept the record open to receive further information. After receipt of this information, a decision meeting was held on September 19, 2006, at which the Board voted 4-0-1 to grant the application.

DECISION AND ORDER

Notice of Application and Notice of Hearing. By memoranda dated March 17, 2006, the Office of Zoning (“OZ”) gave notice of the filing of the application to the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 6C, the ANC within which the subject property is located, and the Single Member District member for 6C05. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and mailed such notice to the Applicant, ANC 6C, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 6C was automatically a party to the application. There were no requests for party status from individuals.

Applicant’s Case. Mr. Jones, with the help of Mr. Araque, testified as to the nature of the restaurant operation and how it complies with the Zoning Regulations.

Government Reports. The Office of Planning filed a report with the Board on July 18, 2006. In the report, OP recommended approval of the application subject to conditions, provided certain outstanding issues were addressed and explained. OP recommended the following conditions to help mitigate any potential adverse impacts: (1) opaque gates on the trash bin enclosure, with a notation to this effect on the plans, (2) exterior lighting that is directed downward and does not exceed 100 watts, 1420 to 1750 lumens, and (3) increased frequency of trash collection to three times a week. The issues on which OP requested further clarification were the number of employees and whether any employee transportation management plan was proposed, and how deliveries would be accommodated without blocking 2nd Street.

The District Department of Transportation filed a report with the Board dated August 11, 2006 stating that it had no objection to the proposed restaurant and that “traffic generation and the impact to the surrounding traffic network are expected to be minimal.” DDOT recommended using the alley for deliveries, but also indicated a willingness to assign appropriate curb space on 2nd Street for a loading zone if the Applicant so desired. DDOT further recommended limiting deliveries to between 8:00 a.m. and 12 noon, and delivery truck size to “standard size box trucks.”

ANC Report. The ANC filed two reports with the Board, the first dated June 20, 2006, and the second dated September 14, 2006. Both reports resulted from properly noticed meetings with quorums present. In the first report, the ANC, by a divided vote of 3-2-2, stated its opposition to the application based on the testimony of nearby residents about the potential deleterious effects of the restaurant use. At the time of this first ANC report, there was no DDOT report in the record. After the hearing, the Board requested input from DDOT, and invited the ANC to take a second look at the project, factoring in any opinion and recommendations made by DDOT. This “second look” resulted in the second ANC report, which states that the ANC unanimously voted to support alley deliveries, but does not appear to alter the ANC’s original opposition to the application as a whole.

There was no ANC representative present at the hearing, and so no testimony on behalf of ANC 6C as a whole. Two Single Member District representatives testified, one from ANC 6C-05, the Single Member District wherein the subject property is located, and one from ANC6C-08, an abutting Single Member District. The representative from 6C-05 testified in favor of the project and the representative from 6C-08 testified in opposition.

FINDINGS OF FACT

The property and the surrounding area

1. The subject property is zoned C-2-A and is located at 605 2nd Street, N.E. in

- the Capitol Hill neighborhood, near the corner of 2nd and F Streets, N.E., in Square 753, Lot 94.
2. Second Street, N.E. is a two-way street with unrestricted parking on the side opposite the subject property and residential parking on the side of the subject property.
 3. On the other side of 2nd Street is a C-M-3 zone district.
 4. The subject property is located approximately one block to the east of Union Station and is surrounded, in the immediate neighborhood, by various residential and commercial uses, including a new office building across 2nd Street where the U.S. Securities and Exchange Commission is located, and the Thurgood Marshall Judicial Center, at the southwest corner of 2nd and F Streets, N.E.
 5. The property is 701 square feet in area and is improved with a 2-story with basement single-family row dwelling.
 6. The basement is at-grade at the rear, and has a rear door, and is currently accessible from the front by a stairway leading down into an open area. Entry to the first floor is accomplished by the placement of a wooden catwalk over this open area.
 7. The front façade of the building is flush with the front property line, and the rear of the property abuts a 10-foot wide public alley which widens to 25 feet behind the immediately adjacent row dwelling to the north.
 8. The subject row dwelling is one of a strip of seven row dwellings, at least two of which now house commercial uses.

The proposed project

9. The Applicant plans to gut and redesign the interior of the subject building to accommodate a fast food restaurant use, but will not make any exterior addition to the building.
10. The façade of the building will be mostly maintained, but certain structural alterations are planned. A larger entryway will have to be fitted at the front entrance and the two first floor windows will be altered to serve as entryways. The width and head of the original windows will, however, be retained, reducing the visual significance of this alteration.

11. In the front public space, the existing catwalk will be refurbished, a new wooden patio constructed to provide outdoor seating, and a masonry or wooden planter with low vegetation placed along the sidewalk.
12. A rear exit stairway from the first floor leading to the rear yard will also be installed.
13. The restaurant will be a café/delicatessen-style establishment serving breakfast, lunch, and dinner and providing Wi-Fi services 7 days a week, with daily hours from 7:00 a.m. to 10:00 p.m.
14. The restaurant will have no more than five employees on the premise at any one time and the employees will be required to use public transportation on a regular basis.
15. The restaurant will have indoor seating on the second floor for approximately 15 patrons and outdoor seating for approximately 16.
16. The restaurant will receive at least one delivery each day and all deliveries will be made by vehicles no larger than standard size box trucks.
17. All deliveries by trucks will be made in the rear alley, between 8:00 a.m. and 12:00 noon.
18. The building, with the proposed fast food restaurant use, will continue to exist within the dimensional parameters mandated by the Zoning Regulations, except that the building is already nonconforming as to lot occupancy. Its lot occupancy, 63.1%, will not change due to the proposed project,¹ but is already greater than the maximum 60% permitted in the C-2-A zone district. *See*, 11 DCMR § 772.1.

Compliance with applicable special exception requirements of §§ 733 and 3104

19. The nearest residential zone district is approximately 53 feet from the subject property.

¹No relief is needed due to the building's existing nonconforming status because the modifications proposed to the subject building are "structural alterations" permitted by 11 DCMR § 2001.2. Nor will the addition of the rear exit stairway increase the lot occupancy because the stairway does not "extend above the level of the main floor of the main building" (*See*, 11 DCMR § 199.1, definition of "Building Area") and because it is permitted to occupy the rear yard pursuant to 11 DCMR § 2503.4

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20. There will be a trash dumpster located in the rear yard of the property which will be enclosed by brick walls at least 6 feet in height. The entrance to the dumpster enclosure will be wood plank and will face the alley.
21. Trash will be collected a minimum of three times a week, and more often, if needed.
22. The restaurant will not include a drive-through.
23. There will be no customer entrances in the rear or side of the building. The only customer entrances will be located in the front of the building, facing, and opening into, the C-2-A-zoned area.
24. Low-level lighting (approximately 1420 to 1750 lumens) will be installed in the front and rear of the building for use during evening and day-break hours, but will be cast downward so as not to shine into neighboring windows.
25. All of the customer activity associated with the restaurant will take place in front along the commercially-zoned street and any litter or debris left here, or in the rear yard, will be picked up on a regular basis during business hours.
26. There will be no unacceptable noise produced by the restaurant use, as no amplified sound is planned.
27. Because the building floor area will be less than 3,000 square feet, the Zoning Regulations do not require off-street parking spaces for the restaurant, but one is being provided in the rear yard for the use of employees. *See*, 11 DCMR § 2101.1.
28. Most, if not all of the patrons of the restaurant are expected to walk to the building from nearby offices and the surrounding neighborhood.
29. The restaurant will generate little or no traffic, and likely not more than would be generated by a residential use.
30. Deliveries will be handled in the rear alley in order not to cause congestion on 2nd, or other nearby streets.
31. Trash collection will also take place in the alley, and, if necessary, the trash hauling service workers will roll the trash bins from the rear yard, through the alley, to the trash truck.

32. The proposed restaurant use will service the day-time population of nearby office and other commercial buildings, and will serve local residents during evening and weekend hours.

CONCLUSIONS OF LAW

The Board is authorized to grant a special exception where, in its judgment, the special exception will be “in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.” 11 DCMR § 3104.1. Certain special exceptions must also meet the conditions enumerated in the particular section pertaining to them. In this case, the Applicant had to meet both the requirements of § 733 and § 3104.1 of the Zoning Regulations.

Section 733 of the Zoning Regulations permits a “fast food restaurant” as a special exception in a C-2-A zone if certain enumerated criteria are met. The proposed restaurant use will be a “café/delicatessen-style” establishment, and therefore, although it is not a traditional franchised “fast food restaurant,” it falls under this category of uses for zoning purposes. *See*, 11 DCMR § 199.1, definitions of “Restaurant” and “Restaurant, fast food.”

The application complies with all the applicable criteria of § 733. It is located approximately 53 feet from the nearest residential zone district and is separated therefrom by an alley. *See*, 11 DCMR § 733.2. The trash dumpster will be properly enclosed pursuant to § 733.4’s mandates of a 3-sided brick enclosure, a minimum of 6 feet high, with an opaque gate. The enclosure will face the alley. There will be no drive-through service, nor will any customer entrances be located in the rear or side of the building. *See*, 11 DCMR §§ 733.5 and 733.6. Section 733.8 states that the restaurant use must provide sufficient parking, but not less than required by the Zoning Regulations. The proposed use has no parking requirement in the Regulations, but one space is being provided at the rear, for the use of the employees. Most, if not all, of the patrons of the restaurant will walk to it. Deliveries will be accommodated in the rear alley, as will trash pick-up, to avoid causing congestion on nearby streets. The delivery and trash hauling aspects of the use would be the most likely to have a negative impact on local traffic, and the Board is satisfied that the conditions imposed by this Order will mitigate, or even eliminate, any such impact.

Section 733.7, similarly to § 3104.1, seeks to ensure that the restaurant will not be objectionable to, nor adversely affect the use of, neighboring properties. The restaurant use will operate from 7:00 a.m. to 10:00 p.m., 7 days a week. Given the delicatessen-

style nature of the proposed restaurant, these are reasonable hours, and will provide a commercial establishment available to office workers during working hours, and available to the local residents during evening and weekend hours. There should be no excessive noise, sounds, or odors emanating from the restaurant, and this Order implements a condition of a minimum of three-times-a-week trash pick-up, to ensure no trash build-up. The lighting on the exterior of the building will be low-level and directed downward so as not to impinge on the neighbors.

Section 3104.1 also mandates that a special exception be in harmony with the general purpose and intent of the Zoning Regulations and Maps. The proposed restaurant is in harmony with the C-2-A zone district in which it is located. It is near office buildings, and both commercial and residential uses. Just across 2nd Street, N.E. is a minimally-restrictive C-M-3 zone district. The proposed restaurant is not too intense a use for the building that will house it, nor for the surrounding area. It will fit in with the neighborhood and will provide a neighborhood-serving restaurant that will help enliven the streetscape. The restaurant is envisioned as a neighborhood gathering place that will be a part of the community.

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. OP recommended approval of the application, if certain issues were resolved. The Board agrees with OP’s recommendation and concludes that OP’s noted issues have been accommodated.

The ANC opposed the granting of the application because of the possibility of negative effects on the neighborhood, but it also voted in favor of deliveries being made in the alley. The Board agrees with the ANC’s decision as to alley deliveries, but disagrees with the ANC’s opposition to the application. The Board finds that any potential negative effects on the neighborhood will be mitigated by the manner in which the Applicant has committed to operate, as set forth in the Findings of Fact, and by the conditions imposed in this Order.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a special exception to establish a fast food restaurant pursuant to § 733 of the Zoning Regulations. Accordingly, it is therefore **ORDERED** that the application be **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The building shall be altered pursuant to the plans in the record, including the revised plans, at Exhibit No. 31, Attachment No. 3.
2. Any exterior lighting on the building shall be cast downward.
3. Trash shall be picked up a minimum of three (3) times a week.
4. All loading and deliveries shall be made in the rear alley. However, if DDOT recommends at a future date the assignment of a loading and delivery space/zone in front of the building and both the Applicant and the ANC agree to that alternative location, then the Applicant may conduct loading and delivery in that location without returning to the Board for modification of this Order.
5. Trucks servicing the Applicant's business shall be no larger than standard size box trucks.
6. All truck deliveries shall take place between the hours of 8:00 a.m. and 12:00 noon.
7. Deliveries by personal vehicles, smaller than standard size box trucks, are not subject to condition number 6 above and shall be made using the rear parking space.

VOTE: 4-0-1 (Ruthanne G. Miller, John A. Mann II, Curtis L. Etherly, Jr. and Michael G. Turnbull to grant; Geoffrey H. Griffis, not present not participating)

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

Each concurring Board member has approved the issuance of this order.

ATTESTED BY: _____


Jerrily R. Kress, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 14 2006

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE

BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 14, 2006**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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TWR