

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17654 of Chen's Gourmet Carryout, LLC, pursuant to 11 DCMR § 3103.2, for a use variance to operate a fast-food restaurant under subsection 701.4(q), in the C-1 District at premises 5117 MacArthur Boulevard, N.W. (Square 1419, Lot 50).

HEARING DATES: September 11, 2007

DECISION DATE: September 11, 2007

DISMISSAL ORDER

SELF-CERTIFIED

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

BACKGROUND

The subject self-certified application was filed with the Board of Zoning Adjustment (Board) on April 10, 2007. Pursuant to 11 DCMR 3113.3, notice of the September 11, 2007 public hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 3D and the District of Columbia Office of Planning (OP). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. The Office of Planning submitted a report in support of the application. Advisory Neighborhood Commission 3D submitted a report in support of the application. No parties appeared at the public hearing in opposition to this application.

The application is a request for a use variance to operate a fast-food restaurant under subsection 701.4(q), in the C-1 District at premises 5117 MacArthur Boulevard, N.W. The Applicant indicated that from 1986 to present, the subject property has been leased, operated, and licensed continually by Chen's Gourmet Carryout. Recently, the Zoning Administrator's Office, acting on a request for a change of ownership, triggered a zoning inspection of the property, which in turn resulted in the reclassification of the long standing carryout use to a fast food restaurant establishment. This action prompted the Applicant to file the subject use variance case.

The Board, after careful consideration of the historical facts presented in the record of this case, concludes that no relief is needed to allow the continued operation of the

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subject food service establishment as a fast food restaurant. The Zoning Regulations were amended in 1985, to inter alia, add a definition of "fast food restaurant" and to prohibit such a restaurant as a matter-of-right use in the C-1 zone district. The Board finds, however, that the present use has been operating continuously at the subject site, pursuant to a valid Certificate of Occupancy, as a "carry-out" or a fast food restaurant since at least 1971. Therefore, this use, as a fast food restaurant, is a legal nonconforming use (see 11 DCMR § 199.1, definition of a Nonconforming Use) and no zoning relief is needed to continue its operation.

Pursuant to 11 DCMR § 3101.6, 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. It is therefore **ORDERED** that this application be **DISMISSED** and as such authorizes the Department of Consumer and Regulatory Affairs to issue a certificate of occupancy permit to the Applicant for a "fast food restaurant -carry-out only".

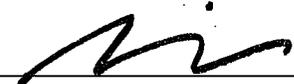
Board's Motion to Dismiss the Application:

VOTE: 3-0-2 (Ruthanne G. Miller, Gregory N. Jeffries and Marc D. Loud to approve the motion, Curtis L. Etherly, Jr. and the NCPC representative not present, not voting).

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

Each concurring member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning 

FINAL DATE OF ORDER: September 12, 2007

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. rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17654 – DISMISSAL ORDER

As Director of the Office of Zoning, I hereby certify and attest that on September 12, 2007, 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:

Shaune Bazner
Shaune Bazner Accessories, Inc.
5117 MacArthur Boulevard, N.W.
Washington, D.C. 20016

Chairperson
Advisory Neighborhood Commission 3D
P.O. Box 40846
Washington, D.C. 20016

Single Member District Commissioner 3D05
Advisory Neighborhood Commission 3D
P.O. Box 40846
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Mary Cheh, City Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Matthew LeGrant, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
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rsn

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning 