

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17860 of Jemal's KFC, LLC, pursuant to 11 DCMR § 3103.2, for a variance from floor area ratio requirements under section 771, a variance from the rear yard requirements under section 774, and a variance from the parking requirements under subsection 2101.1, to permit the development of a two-story commercial building in the C-2-A District at premises 1442 Pennsylvania Avenue, S.E. (Square 1065-NE, Lot 49).

HEARING DATE: January 6, 2009
DECISION DATE: January 6, 2009 (Bench Decision)

SUMMARY ORDER

SELF CERTIFIED

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

The Board 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) 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. ANC 6B submitted a report in support of the application. (Exhibit 21) The Office of Planning (OP) also submitted a report in support of the application. (Exhibit 25) Besides neighbors filing letters and petitions of support (Exhibit 26), Tom W. Whalen, an owner of property in Square 1065NE, testified in support of the application at the public hearing. Mr. Whalen was not a party to the application. In addition, Gary M. Peterson testified in opposition to the application at the public hearing on behalf of the Capitol Hill Restoration Society, which was not a party to the application.

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 § 3103.2, for variances from the requirements of sections 771, 774, and 2101.1 that there exists an exceptional or extraordinary situation or condition related to the property that

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creates a practical difficulty for the owner in complying with the Zoning Regulations, and that 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. No parties appeared at the public hearing in opposition to the application.

The report of ANC 6B, dated December 10, 2008 and marked as Exhibit 21 of the record in this case, stated that the ANC voted at its public meeting to recommend approval of the application as presented. In addition, the report expressed the ANC's belief that the Applicant had carried its burden of proof for the requested variance relief, provided that the terms of the memorandum of understanding ("MOU") between the Applicant and the neighboring property owners would be incorporated into the order as conditions of the Board's approval of the application. The Board believes that the matters addressed by the specific terms of the MOU are not relevant to the variance relief requested in this case and hereby concludes that the ANC did not intend its support of the application to be contingent upon the inclusion of those terms as conditions in the Board's order. Accordingly, a decision by the Board to grant the 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 proving under 11 DCMR §§ 771, 774, 2101.1, and 3103.2 that there exists an exceptional or extraordinary condition or situation related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the 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 Zoning Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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 (pursuant to Exhibit No. 9 - Plans) be **GRANTED**.

VOTE: 3-0-2 (Ruthanne G. Miller, Gregory N. Jeffries, Mary Oates Walker, to approve. Shane L. Dettman, and Marc D. Loud, not present and not voting.)

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

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

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: JAN 08 2009

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.

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, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY

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THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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As Acting Director of the Office of Zoning, I hereby certify and attest that on JAN 08 2009, 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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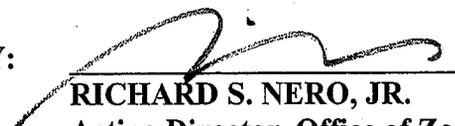
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