

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17875 of BB & H Joint Venture, on behalf of Potomac Foods Company, pursuant to 11 DCMR 3104.1, for a special exception to permit the continued use of an accessory parking lot serving a Burger King restaurant under section 214 of the Zoning Regulations, in the R-1-B District at premises Rear 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822).

HEARING DATE: February 3, 2009
DECISION DATE: March 3, 2009

SUMMARY ORDER

Self-Certification

The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2. The request did not include relief from § 2116.1, which requires that all parking, whether required or not, be located on the lot of the building they serve. These spaces serve a Burger King restaurant located on a different lot. The Board is authorized to grant relief from that provision as a special exception pursuant to § 2216.5, and appears to have implicitly done so in the past as to these accessory spaces.

Notice of Application and Notice of Hearing

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) 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application.

ANC Report

The ANC submitted a report in support of the continued use of the property as an accessory parking lot.¹ (Exhibit 34) The ANC report contained proposed conditions for the special exception use, some of which differed from conditions that were proposed by the Applicant and the Office of Planning (OP). The ANC proposed that the special exception term be limited to two years, while the Applicant sought a ten year term.

¹ Although the ANC report was untimely filed, the Board waived its rules to accept the report into the record.

OP Report

OP also submitted a report in support of the continued use of the property as an accessory parking lot. (Exhibit 25). The OP originally proposed that the special exception term be set for ten years, but during testimony at the public hearing, OP recommended a five year term. OP also pointed out that the Applicant had failed to comply with several of the conditions in the previous BZA order.

The ANC Issues and Concerns

The Board is required under Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(A), to give “great weight” to the issues and concerns raised by the affected ANC. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, and make specific findings and conclusions with respect to each of the ANC’s issues and concerns. As stated, the ANC did not oppose the application, but it did oppose the Applicant’s request for a ten year term, citing a history of non-compliance with prior Board orders and problems with noise and rodents at the site. The ANC maintained that nearby residential properties were affected by truck noise and rodent infestation at the site, and that both of these conditions stemmed from the trash dumpsters at the accessory parking lot. Because the Board finds the ANC’s concerns to be legitimate, it is adopting a three year term instead of the ten year term requested by the Applicant, and is also requiring that the dumpsters be removed from the accessory lot.²

The OP Recommendations

The Board is also required under D.C. Official Code §6-623.04 (2001) to give “great weight” to OP recommendations. While OP recommended continuing most of the conditions imposed in previous orders, it advised that the Board should approve the application for a term of five years. OP provided a cogent rationale with respect to several of the proposed conditions. However, as discussed previously, the Board was not persuaded it should incorporate all of the proposed conditions, or that the term should be for more than three years.

Approval for Continued Use as Accessory Parking Lot

As directed by section 3119.2 of the Zoning Regulations, the Board has required the Applicant to satisfy the burden of proving the general conditions for a special exception under section 3104.1, and the specific conditions for an accessory parking lot under section 214. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

² The dumpsters serve the Burger King lot, not the accessory parking lot, and the Board finds they have no place on a residentially zoned lot. The Board also finds that locating the dumpsters on the accessory parking lot runs afoul of section 2303.1(c), which prohibits all “structure[s]” on a parking lot, with the exception of an attendant shelter.

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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 sections 3104.1 and 214. The Board considered the conditions proposed by the Applicant, the ANC and the OP, and also considered the Applicant's history of non-compliance with conditions of prior Board orders, and the adverse impacts on neighboring property owners which resulted from the dumpsters. In conclusion, the Board found that the requested relief could be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concluded that, subject to the conditions set forth below, the requested relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to section 3101.6 of the Regulations, the Board has determined to waive the requirement of section 3125.3, the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The application shall be approved for a period of **THREE (3) YEARS**.
2. The dumpsters shall be removed from the accessory parking lot.
3. At no time shall delivery, vendor, or trash trucks be permitted to enter the accessory parking lot.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day, or more often if they are overflowing with trash.
5. The parking surface and fence along the western boundary of the site shall be maintained in good condition at all times. All parts of the lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the property shall be pruned at least once per year.
6. An exterminator shall perform extermination services twice a month to control any rodents. In addition, the portion of the fence owned by the Applicant and located on the property shall be reinforced underground to help prevent any rodents from entering the neighbors' properties.
7. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.
8. The Applicant shall provide to the ANC and the residences within 200 feet an annual report summarizing its compliance with the conditions.

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9. Existing wheel stops, signage, guardrail, parking space striping, and direction signage painted on the pavement shall be properly maintained.
10. The Applicant shall, as necessary, repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.

VOTE: **5-0-0** (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, Shane L. Dettman and Gregory N. Jeffries to APPROVE)

Vote taken on March 3, 2009

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

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

ATTESTED BY: _____


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

FINAL DATE OF ORDER: AUG 12 2009

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 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

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ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., 9 (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 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.

SG

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 AUG 12 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Laura N. Begun, Esq.
Troutman Sanders, LLP
1600 International Drive
Suite 600, Tysons Corner
McLean, Virginia 22102

Single Member District Commissioner 3F01
Advisory Neighborhood Commission 3F
4401-A Connecticut Avenue, N.W., #244
Washington, D.C. 20008

Albert R. Hinton
President
BB&H Joint Venture
7611 Rickenbacker Drive
Gaithersburg, Maryland 20879

Mary Cheh, Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W., Suite 108
Washington, D.C. 20004

Chairperson
Advisory Neighborhood Commission 3F
4401-A Connecticut Avenue, N.W., #244
Washington, D.C. 20008

Bennett Rushkoff, Esquire
Acting General Counsel
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


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