

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17901 of East Capitol Minnesota, LLC, pursuant to 11 DCMR §§ 3104.1 and 3104.2, for a special exception to allow a food delivery /carry out service (Papa John's Pizza) under section 734, and variances from the requirement for a brick wall along the alley lot line and enclosed refuse dumpster under subsections 734.3 and 734.4, respectively, in the C-2-A District at premises 3548 East Capitol Street, N.E. (Square 5047, Lot 801).

HEARING DATE: April 7, 2009
DECISION DATES: April 14 and 21, 2009

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6)

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) 7A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7A, which is automatically a party to this application. ANC 7A did not file a report on the application¹. The Office of Planning (OP) submitted a report in support of the relief pursuant to section 734 and subsections 734.3 and 734.4 (Exhibit 35). One letter of opposition was received. (Exhibit 33) Three petitions in support of the application were submitted, signed by approximately 465, of which 400 are estimated to be District of Columbia residents and approximately 50 of whom are estimated to be located within the boundaries of ANC 7A. (Exhibits 36, 32, and 34)

¹ The Office of Planning's report dated March 31, 2009, indicated that OP was informed by the applicant's attorney that ANC 7A had voted against the application at its regularly scheduled meeting of March 17, 2009. However, no one from the ANC appeared at the hearing, nor was a written report filed. A written report of the ANC is required in order to give the ANC great weight. 11 DCMR § 3115.2.

BZA APPLICATION NO. 17901
PAGE NO. 2

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 § 3104.1, for special exception under section 734 and for variances under subsections 734.3 and 734.4. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proving under 11 DCMR §§ 3103, 734.3, and 734.4 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.

Based upon the record before the Board and having given great weight to the OP report, the Board also concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 734, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, 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 (pursuant to Exhibits 15 and 39 – Plans) be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1) Maintain, as required, the new CMU (concrete masonry unit) screen wall and gates that comprise the new dumpster storage area (8'-0" x 20'-0") in the parking area in Lot 801. Gates to be maintained in working order and securable, such that waste containers remain inside the enclosure. The walls and gate metal shall be painted to match the color of the existing, adjacent building wall.
- 2) Maintain, as required, the new Trash Compactor PVC screen fence and gates at the existing loading dock in the parking area of Lot 801 to provide a safe and attractive privacy screen for adjacent residential neighbors. The PVC fence and gates shall match the color of the adjacent painted brick wall.

BZA APPLICATION NO. 17901

PAGE NO. 3

VOTE: 3-0-2 (Michael G. Turnbull, Shane L. Dettman, Marc D. Loud, to APPROVE. Mary Oates Walker and the third Mayoral appointee (vacant), not participating, not voting.)

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

Each concurring member approved the issuance of this order.

ATTESTED BY:


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: APR 27 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.

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

BZA APPLICATION NO. 17901
PAGE NO. 4

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, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, 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.

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.

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Board of Zoning Adjustment



BZA APPLICATION NO. 17901

As Acting Director of the Office of Zoning, I hereby certify and attest that on April 27, 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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BZA APPLICATION NO. 17901
PAGE NO. 2

ATTESTED BY:

A handwritten signature in black ink, appearing to read "Richard S. Nero, Jr.", is written over a horizontal line.

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