

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17958 of Community Auto Service Center, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the use provisions under subsection 701.1 and a variance from the off-street parking requirements (14 required spaces) under subsection 2101.1, and for a special exception from subsection 2116.6 to permit the location of accessory parking spaces off-site, to establish an automobile repair and service establishment in the C-1 District at premises 4408 Arkansas Avenue, N.W. (Square 2819, Lot 808).¹

HEARING DATE: September 8, 2009 and December 1, 2009
DECISION DATE: December 15, 2009

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by two letters, one dated February 19, 2009 and the other April 14, 2009, from the Zoning Administrator certifying the required relief.² (Exhibits 5 and 17).

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) 4C and to owners of property within 200 feet of the site. The site of this

¹ The Applicant amended the original application that only requested a change of use so as to include a request for a variance from the off-street parking requirements under subsection 2101.1 and a special exception to permit accessory parking under section 2116. The Applicant noted in its amended application that it is required to have 14 parking spaces and that, because the auto repair shop occupies 97% of the property, the Applicant requested a variance from off-street parking as well as special exception to permit accessory spaces off-site. (Exhibit 33). The Applicant contracted with Alpha Kappa Alpha Sorority, its next-door neighbor, to lease 11 parking spaces to assist in meeting the Applicant's parking requirements. The unsigned lease agreement, for an initial term of 2 years and with the potential of renewal at the Tenant's option for successive 2-year periods up to a total of ten years, was entered into the record. (Exhibit 38).

² The second letter from the Zoning Administrator clarified that the Applicant needed a use variance.

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application is located within the jurisdiction of ANC 4C, which is automatically a party to this application. ANC 4C filed a report, dated December 8, 2009, which indicated that the ANC, at a properly noticed meeting at which a quorum was present, considered and unanimously voted to support the application, as amended.³ (Exhibit 39). The Office of Planning (OP) filed a timely report recommending approval of the amended application. (Exhibit 36).

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 a variance from the use provision under subsection 701.1 and from the off-street parking requirements under subsection 2101.1. Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 701.1, and 2101.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty or an undue hardship 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 Map.

In addition, 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 subsection 2116.6. 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2116.6, 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 be **GRANTED AS CONDITIONED**:

³ The ANC had previously submitted a Letter of Support, dated June 9, 2009, in support of a use variance, after a prior ANC vote at a duly noticed meeting. (Exhibit 25).

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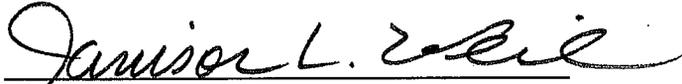
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1. The Applicant shall enter into an agreement to provide 11 off-site accessory parking spaces and the term for that agreement shall be for a period of two years, beginning the effective date of this order. At the end of that two-year period, the Applicant shall return to this Board for renewal of this approval.

VOTE: 3-0-2 (Shane L. Dettman, Meridith H. Moldenhauer, Konrad W. Schlater to APPROVE. Two other Board members not present, nor voting.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 21 2009

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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,

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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.

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As Director of the Office of Zoning, I hereby certify and attest that on DEC 21, 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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ATTESTED BY:



JAMISON L. WEINBAUM

Director, Office of Zoning