

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17962 of Moon Star Carry-Out, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to allow a fast food restaurant under subsection 701.1, in the C-1 District at premises 5008 Benning Road, S.E. (Square 5340, Lot 59).

HEARING DATE: September 22, 2009

DECISION DATE: September 22, 2009

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief.

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) 7E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7E which is automatically a party to this application. ANC 7E submitted a letter in support of the application. The Office of Planning (OP) submitted a report in support to the application. The Board also received and considered a letter (Exhibit 22) and testimony from Mr. Benjamin E. Thomas in opposition to the application. Mr. Thomas's concerns included the cleanliness and appearance of the interior and exterior of the subject premises. The Applicant was assisted at the hearing by a Chinese language interpreter.

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, from the variance requirements of section 701.1. 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 and ANC reports, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 701.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in

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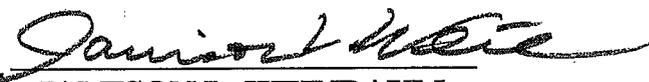
complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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** with the following **CONDITIONS**:

1. The Applicant shall sweep the sidewalk and street curb areas adjacent to the subject premises at least once daily.
2. The Applicant shall remove graffiti on the interior and exterior of the subject premises within one week of the graffiti's first appearance.

VOTE: 4-0-1 (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer and Peter G. May to Approve. The third mayoral appointee vacant, 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: 
JAMISON L. WEINBAUM
Director, Office of Zoning

SEP 23 2009

FINAL DATE OF ORDER: _____

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.

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.

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 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17962

SEP 23 2009

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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:

Zi Kui Zhang
Moon Star Carry-Out
5008 Benning Road, N.E.
Washington, D.C. 20019

Chairperson
Advisory Neighborhood Commission 7E
5001 Hanna Place, S.E.
Washington, D.C. 20019

Single Member District Commissioner 7E01
Advisory Neighborhood Commission 7E
5001 Hanna Place, S.E.
Washington, D.C. 20019

Yette M. Alexander, Councilmember
Ward Seven
1350 Pennsylvania Avenue, N.W.
Suite 506
Washington, D.C. 20004

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

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