

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18099 of Beau Thai LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow a change from one nonconforming use (fast food restaurant) to another (restaurant), first floor, under subsection 2003.1, in the R-4 District at premises 1700 New Jersey Avenue, N.W. (Square 508, Lot 41).¹

HEARING DATE: September 21, 2010
DECISION DATE: September 21, 2010

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”) 2C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. ANC 2C filed a timely report, dated August 1, 2010, in support of the Applicant’s project. The ANC’s report indicated that at a duly-noticed and scheduled public meeting on July 7, 2010 with a quorum present, the ANC voted 4:0 to support the application. (Exhibit 43). The Office of Planning (“OP”) submitted a timely report recommending approval of the application as a neighborhood facility with three conditions, namely, that the Applicant provide screening of the commercial dumpster and residential trash storage area in the southeast corner of the rear yard, have a solid waste management plan with pickup every second day the restaurant is in operation and prior to 9:30 a.m., and have the daily hours of operation of the restaurant not go past 11:00 p.m. (Exhibit 45).

¹ The application heading was amended to eliminate the phrase “sit down” before the word “restaurant.”

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Two neighbors, including Martin Moulton, President of the Convention Center Community Association, and Marie Maxwell, testified at the hearing in support of the application. A third neighbor also spoke in support at the hearing. Additionally, there was correspondence in the record in support of the application from David Knight (Exhibit 42), Ben Kanoy (Exhibit 41), Erin Socia (Exhibit 40), Jeff Wallbaum (Exhibit 39), Scott M. Dillon (Exhibit 38), Gregory J. Bowles (Exhibit 37), Robert G. Drew (Exhibit 36), The Pew Charitable Trusts (Exhibit 35), Glen Herzi (Exhibit 34), Laura Hendee (Exhibit 33), Mauricio Hernandez (Exhibit 32), Brian and Nadia Smith (Exhibit 31), Stephanie Celandine (Exhibit 30), Convention Center Community Association (Exhibit 29), Emil Ali (Exhibit 28), Si Kailian (Exhibit 27), and Barry Kreiswirth (Exhibit 26).

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 a special exception under § 2003.1. 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 2003.1, 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 WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall provide appropriate screening for the commercial dumpster and residential trash storage at the southeast corner of the rear yard of the property.
2. The Applicant shall have a solid waste management plan that provides for waste pickup every second day the restaurant is in operation and shall not occur before 9:30 a.m.
3. The Applicant shall not operate the restaurant beyond 11:00 p.m., Monday through Sunday.

VOTE: **3-0-2** (Meridith H. Moldenhauer, Michael G. Turnbull, Jeffrey L. Hinkle to APPROVE. Nicole C. Sorg and the third Mayoral appointee (vacant) neither participating, 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
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: SEP 28 2010

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 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.

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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on SEP 28 2010, 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:


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