

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18328 of Noodles & Company, pursuant to 11 DCMR § 3104.1, for a special exception to establish a fast food restaurant under § 733, in the C-2-A District at premises 1815 Wisconsin Avenue, N.W. (Square 1299, Lot 327).¹

HEARING DATE: March 20, 2012
DECISION DATE: March 20, 2012 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board of Zoning Adjustment (“Board” or “BZA”) provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission (“ANC”) 2E, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E submitted a letter report, dated February 28, 2012, in support of the application with conditions. The ANC indicated that at a duly noticed and regularly scheduled public meeting on February 27, 2012, with a quorum present, the ANC voted unanimously (5:0:2) to support the application with four conditions. (Exhibit 23.) The Applicant agreed to the conditions requested by the ANC.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application with five conditions. The first four conditions OP recommended are identical to those requested by the ANC and the fifth condition would grant flexibility to make modifications under certain circumstances to the roof deck and other exterior elements in conformance with design guidance of the Old Georgetown Board of the Commission of Fine Arts and the Historic

¹ The caption has been amended to remove the reference to the C-1 portion of the property and thereby reflects that the proposed use is limited to the C-2-A portion of the property. The proposed fast food restaurant, while on a property that is split-zoned C-1/C-2-A, is only to be located on the portion of the property that is zoned C-2-A, where this use is allowed by special exception, and not on the smaller portion of the property that is zoned C-1 where the use is not allowed.

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Preservation Review Board. This condition was requested by the Applicant and OP indicated that it had no objection to it. (Exhibit 27.) The District's Department of Transportation ("DDOT") submitted a report indicating that it did not anticipate any adverse effects on the transportation network as a result of the proposed use. (Exhibit 25.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under §§ 3104.1 and 733 to allow a fast food establishment in the C-2-A District, and requested modifications to the provisions of §§ 733.2, 733.3 and 733.4, as permitted by § 733.12. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. 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 proof for a special exception, pursuant to 11 DCMR §§ 3104.1 and 733, 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 also concludes that modifications requested to the provisions of §§ 733.2, 733.3 and 733.4 will comply with the general purposes and intent of § 733. 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 requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, subject to the approved plans as shown on Exhibit 26 and to the following conditions:**

1. The establishment will serve dine-in customers with non-disposable plates and utensils;
2. The hours of operation will not exceed 10:00 a.m. to 10:00 p.m. on weekdays, and 10:00 a.m. to 11:00 p.m. on Fridays and Saturdays;
3. The establishment, including its roof deck, will not produce sounds audible outside the property line of the site in which it is located;
4. The percentage of carry-out customers will not be expected to exceed 35%;
5. The Applicant shall have the flexibility to make modifications to the roof deck and other exterior elements in conformance with design guidance from the Old Georgetown Board of the Commission of Fine Arts and/or the Historic

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Preservation Review Board, provided that the setbacks remain substantially the same, and no new areas of zoning relief are required;

6. The Applicant is granted relief from § 733.2 to locate the establishment on a lot that directly abuts a Residence District without being separated therefrom by a street or alley;
7. The Applicant is granted relief from § 733.3 in order to provide a non-continuous brick wall between Lot 327 and the adjacent residential lot to allow access between the properties; and
8. The Applicant is granted relief from § 733.4 to provide an appropriate gate to the refuse enclosure in consultation with the landlord and the Old Georgetown Board of the Commission of Fine Arts and/or the Historic Preservation Review Board, as necessary.

VOTE: **5-0-0** (Rashida Y.V. MacMurray, Anthony J. Hood, Lloyd J. Jordan, Nicole C. Sorg, and Jeffrey L. Hinkle to Approve.)

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

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

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: **MAR 27 2012**

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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 _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, 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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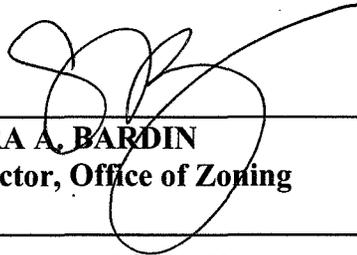
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