

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18352 of C.W.C., Inc. and Mahmoud Abd-alla, Trustee, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions under § 330.5 to allow outdoor display and sale of seasonal merchandise and storage accessory (in the rear R-4 zoned portion) to a retail hardware store in the CHC/C-2-A and R-4 Districts at premises 1113-1117 Pennsylvania Avenue, S.E., and 1123 Pennsylvania Avenue, S.E. (Square 994, Lots 44 and 838).

HEARING DATE: May 22, 2012

DECISION DATE: May 22, 2012

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 the Applicant, Advisory Neighborhood Commission ("ANC") 6B, 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 6B, which is automatically a party to this application. The ANC submitted a report in support of the application. ANC 6B submitted a report, dated May 9, 2012, which stated that at a duly scheduled and noticed public meeting, at which a quorum was present, the ANC voted to support the application by a vote of 8:0 (with one recusal). The ANC noted that the support was "contingent specifically to the hardware store's use for display, storage, and sale of seasonal merchandise." (Exhibits 50 and 55.) The ANC also testified in support at the hearing.

The Office of Planning ("OP") submitted a timely report in support of the application. (Exhibit 58.) The District Department of Transportation ("DDOT") submitted a letter of no objection to the requested variance. (Exhibit 49.) A letter of support was submitted to the record from the Capitol Hill Restoration Society. (Exhibit 63.) Additionally, approximately 36 letters and 1,155 petition signatures were submitted in support of the application from the Councilmember representing Ward 6, Tommy Wells, and neighbors and visitors. (Exhibits 27-47, 51-52, 54, 56-57, 59-62, and 64.)

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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 variance under § 3103.2 from the strict application of the use provisions under § 330.5 to allow the commercial use of residentially-zoned property. The requested commercial use would allow for the outdoor display and sale of seasonal merchandise and storage accessory to an existing retail hardware store. 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 pursuant to 11 DCMR § 3103.2 for a variance under § 330.5, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested 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 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 FOLLOWING CONDITION:**

1. The approved use is for outdoor display and sale of seasonal merchandise and storage.

VOTE: **5-0-0** (Lloyd L. Jordan, Nicole C. Sorg, Rashida Y.V. MacMurray, Jeffrey L. Hinkle, and Anthony J. Hood 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: **MAY 29 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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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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 **MAY 29 2012**, 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 ANC's and SMD's 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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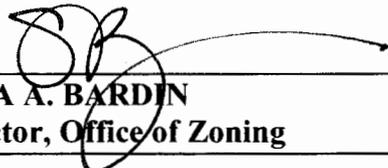
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ATTESTED BY:



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