GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18402 of Shophouse LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for variances from the floor area ratio (§ 771.2), nonconforming structure (§ 2001.3), and rear yard (§ 774) requirements and a special exception under § 733 for a fast food establishment in the C-2-A District at premises 2805 M Street, N.W. (Square 1212, Lot 802).[1]

HEARING DATE: September 18, 2012
DECISION DATE: September 18, 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 Advisory Neighborhood Commission ("ANC") 2E and to owners of property within 200 feet of the site as well as to the Office of Planning ("OP"). The site of this application is located within the jurisdiction of ANC 2E, which is automatically a party to this application. ANC 2E submitted a timely written report of support. The ANC's report indicated that at a duly noticed and regularly scheduled meeting held September 4, 2012, at which a quorum of six of seven commissioners was present, the ANC voted unanimously (6:0), to support the application with conditions.[2] (Exhibit 29.) The Office of

[1] The variance relief requested included a use variance under § 771.2 and area variances under §§ 774 and 2001.3.

[2] The ANC's report stated that they had no objection to the special exception of the Applicant to operate as a fast food enterprise, provided that an establishment at the subject property operates with a customized order and service format using fresh, varied ingredients and all food is prepared according to each individual order; that such establishment will not operate a deep fryer; that such establishment will provide adequate refrigeration for food but have no freezer on the premises; and to the maximum extent possible, such establishment shall operate on the principle of providing foods for consumption on the premises, with take-out orders subordinate. (Exhibit 29.) At the hearing, the Applicant, through its attorney, stated that they agreed to accept the ANC's conditions if those were put into the order.

Planning ("OP") submitted a timely report dated September 11, 2012 recommending approval of the application, provided that there would be a daily trash pickup. (Exhibit 30.) The District Department of Transportation ("DDOT") submitted a report of "no objection." (Exhibit 27.)

Although a request for party status in opposition was filed (Exhibit 28) by a single group of the neighboring property owners and business operators, that request for party status was withdrawn and the would-be party opponents indicated in their submission dated September 17, 2012, that they were now in support of the application.[3] (Exhibit 34.) There were no other party requests, nor were there any other parties.

Variance Relief

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 use variance under § 771.2 and area variances under §§ 774 and 2001.3 of the Zoning Regulations. 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 filed in this case, the Board concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2 and 771.2, 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 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.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board also concludes that the applicant has met the burden of proving under 11 DCMR §§ 3103.2, 774, and 2001.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty 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.

Special Exception Relief

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 relief under § 733 of the Zoning Regulations. No parties appeared at the public

[3] The Applicant testified that it had agreed to use the same trash company for daily pickup as did its neighboring restaurants which were among the businesses that filed and later withdrew a party-opponent request. The Applicant also stated on the record that it would not be storing trash out on the street and was otherwise cooperating with its neighbors regarding the use of the alley to the rear of the subject property.

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 filed in this case, the Board concludes that the Applicant has met the burden of proof, 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 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. The waiver will not prejudice the rights of any party, and is appropriate in this case.

The Board approved this application on two motions, one to approve the requested variances and special exception relief and the other to amend the earlier motion and order to add five conditions to the order.[4] It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT** to the revised plans at Exhibit 26, Tab G and the following conditions:

1. The fast food establishment shall operate with a customized order and service format.

2. The fast food establishment shall not operate deep-fryer cooking oil equipment.

3. The fast food establishment shall not store cooking oil at the exterior of the building.

4. Take-out orders at the fast food establishment shall be a subordinate use to consumption of food on the premises.

5. Trash shall be stored on the premises and collected and removed daily.

MOTION TO APPROVE THE APPLICATION:
VOTE: **5-0-0** (Lloyd J. Jordan, Marcie I. Cohen, Nicole C. Sorg, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle to **Approve**.)

MOTION TO AMEND THE ORDER TO ADD CONDITIONS:
VOTE: **5-0-0** (Nicole C. Sorg, Lloyd J. Jordan, Rashida Y.V. MacMurray, Jeffrey L. Hinkle, and Marcie I. Cohen to **Approve as Conditioned**.)

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[4] At the hearing the Board asked the Office of the Attorney General ("OAG") to comment on the proposed conditions. The OAG noted that the BZA, if it approved the application, would be approving a use, but not a specific user, and that any conditions should be couched to mitigate identified adverse impacts. The Board noted that the ANC's report spoke to potential adverse impacts that would be mitigated by the conditions the Board members proffered.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 25, 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.