

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 18473 of Robert F. McCulloch**, pursuant to 11 DCMR §§ 3104 and 2003, for a special exception to continue allowing the use of a pick-up dry cleaner/Laundromat in the R-4 District at premises 300 11th Street, S.E (Square 990s, Lot 812) (“the Subject Property”).

**HEARING DATE:** December 18, 2012  
**DECISION DATE:** December 18, 2012

**DECISION AND ORDER**

**Zoning Administrator Letter**

By letter dated June 25, 2012, the Zoning Administrator advised Mr. Han Young Kwak, a tenant of the Applicant, that his application for a certificate of occupancy to use the property as a “Pick up Dry cleaners/Laundromat” was disapproved because the use was not permitted in an R-4 Zone District. Accordingly the Applicant, on August 30, 2012, applied for a variance with the Board of Zoning Adjustment (“Board” or “BZA”). In fact, the applied for use had been permitted by prior special exceptions granted since 1988 pursuant to 11 DCMR § 2003, but the most recent approval was due to expire. The Zoning Administrator therefore modified his instructions and the Applicant amended his application to request renewal of the special exception. The advertised caption has been changed to reflect the actual relief sought.

**History of the Use**

The building on the Subject Property was constructed in 1908 and used ever since for commercial purposes. A coin-operated laundry was lawfully established prior to the change in the Zoning Regulations that mapped the property into a zone where that use was not permitted. As of the effective date of that amendment, the Laundromat became a nonconforming use that could lawfully continue unless and until the use was abandoned. (See 11 DCMR § 2005.)

In 1988 the Applicant sought permission to add a dry cleaning pick up service. The Board accepted the application as coming within the purview of § 2003, which permits a nonconforming use to be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right.

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Because the existing laundromat use had been adversely impacting the neighborhood, the Board imposed seven conditions to its approval, including a term limit of two years. (See Order No. 14749.) That approval was renewed without opposition in 1990 by Order No. 15321, which included the same seven conditions, except that the term was increased to seven years. A similar non-opposed renewal occurred through the Board's issuance of Order No. 16266. Again the Board included the seven conditions of approval, but increased the term to 17 years.

**Request for Approval Without Term Limit**

In a statement filed in support of the Application, the Applicant requested that the Board not impose a term limit. (Exhibit No. 3.) The Applicant contended that no evidence exists that the business as operated has adversely impacted the neighborhood and therefore the "business should not be burdened with the insecurity of a temporary exception and with the time-consuming and costly process of periodic renewal." The Applicant also submitted a petition with over 500 signatures requesting the Board to "permanently extend the special exception." (Exhibit No. 4.)

**Notice of Application and Notice of Hearing**

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 Advisory Neighborhood Commission ("ANC") 6B, and to owners of property within 200 feet of the site. The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 23.) The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application.

**Reports**

**ANC 6B**

The ANC submitted a report indicating that at a regularly called, properly noticed public meeting held December 11, 2012, and with a quorum present, it voted 8-1-1 to support a grant of the appropriate zoning relief, whether it is a variance or special exception, for a 15 year term. (Exhibit 25.) The ANC report made its support contingent on the continuation of the six other conditions imposed by the Board in Order No. 16266.

**The Office of Planning ("OP")**

OP also submitted a report in support of the continued use of the property as a coin-operated laundry and dry cleaner subject to the conditions set forth in Order 16266 excluding an expiration date. (Exhibit 24.) OP stated in its report that this special exception was granted in the past as a neighborhood facility with conditions "to protect the value, utilization or enjoyment of property in the neighborhood." Since there were no interruptions or changes proposed to the

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use, OP recommended approval of the special use with the same substantive conditions but no term limitation. OP also suggested some revisions to the phrasing of the six substantive provisions.

The OP representative at the Board's hearing, Mr. Stephen Cochran, further elaborated upon the basis for the recommendation of approval without a term. Mr. Cochran noted the use has been in place "for 24 years without any letters of complaint" and in fact enjoys broad community support, as evidenced by the over 500 signatories to the petition in support. From this Mr. Cochran concluded that the Applicant has proved the use to be a "good neighbor" that can remain in place provided it operates under the remaining six conditions.

**Approval for Continued Use as a Pick-Up Dry Cleaner/Laundromat**

As directed by § 3119.2 of the Zoning Regulations, the Board required the Applicant to satisfy the burden of proving the general conditions for a special exception under § 3104.1 and the specific conditions for § 2003. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

**The ANC Issues and Concerns**

The Board is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(A), to give "great weight" to the issues and concerns raised by the affected ANC. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, and make specific findings and conclusions with respect to each of the ANC's issues and concerns. As stated, the ANC recommended that the Board grant the zoning relief requested for a 15 year term, subject to the six substantive conditions previous imposed in Board Order No. 16266.

Although the Board agrees with the ANC that adherence to the six substantive conditions should continue to be required, the Board is not persuaded that a time limit of the approval is needed.

A term limit serves three different functions.

First, a term limit provides a solution to the uncertainty in granting a first time special exception. See, e.g., *Woodbury v. Zoning Board of Review of City of Warwick*, 82 A.2d 164, 167 (R.I. 1951). (A two-year term imposed, at the end of which, "the board would be in a position, according to the facts then appearing, either to renew the exception if requested, or to permit the property to again be used as a tourist home.").

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Second, a term limit “insures that in the event conditions have changed at the expiration of the period prescribed the board will have the opportunity to reappraise the proposal by the applicant in the light of the then existing facts and circumstances.” *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097-1098 (D.C. 1979), quoting, *In re Goodwin*, Sup. Ct. N.Y., N.Y.L.J., July 5, 1962, as quoted in 3 A. Rathkopf, *The Law of Zoning and Planning* § 38.06[2] (4th ed. 1979).

Third, a term limit is useful in situations where the applicant did not comply with conditions set forth in prior orders. Thus, in *Application No. 17875 of BB & H Joint Venture, on behalf of Potomac Foods Company*, the Applicant proposed a 10-year term for continued operation of an accessory parking lot serving a fast food establishment. The affected ANC objected to the term’s length citing noncompliance with the prior conditions and the resulting adverse impact on the neighborhood. Because the Board found “the ANC’s concerns to be legitimate” it adopted “a three year term instead of the ten year term requested.”

In the case at hand, there is no uncertainty about any potential adverse affects or changes to the neighborhood and no history of non-compliance with conditions set on the use. Instead, the use has operated in compliance with all the conditions set forth in previous orders and enjoys the extensive support of local residents. As noted by OP, the Applicant has received not one letter of complaint since the Board first approved the addition of the dry cleaning use. In light of this evidence, the Board agrees with the Applicant that there is no basis to continue the uncertainty and additional costs associated with a term limit.

The Board is cognizant of concerns expressed over the potential adverse consequences from a change in ownership, but such personal considerations are irrelevant to the review of a special exception application. The Board is confident that the conditions in place will safeguard the neighborhood against any adverse impacts, and that any noncompliance by any future owner can be effectively addressed through enforcement actions.

**The OP Recommendations**

The Board is also required under D.C Official Code §6-623.04 (2001) to give “great weight” to OP recommendations. In this case, the Board concurs with OP’s recommendation to approve the special exception application with conditions set forth in Order 16266 except for an expiration date. The Board agrees with OP’s assessment that the laundromat and dry cleaning establishment is a good neighbor and that the six conditions of approval will ensure that will remain the case.

**CONCLUSIONS**

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

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§§ 3104.1 and 2003.5. In conclusion, the Board found that the requested relief could be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concluded that, subject to the conditions set forth below, the requested relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

It is hereby **ORDERED** that the application is **GRANTED** to allow zoning relief for a special exception to allow the continued use of a pick-up dry cleaner/Laundromat in the R-4 District at premises 300 11th Street, S.E. (Square 990s, Lot 812), **SUBJECT** to the following **CONDITIONS**:

1. The hours of operation shall be from 7:00 a.m. to 9:00 p.m.;
2. An attendant shall be present on the premises at all times that the facility is in operation;
3. The coin laundry and the dry cleaning drop off and pick up facilities shall be operated as one unified facility in a visually unimpeded space;
4. No flammable dry cleaning materials, or materials with toxic fumes or noxious odors shall be used or stored on site;
5. The Applicant shall maintain the interior and exterior in a neat and clean condition; and
6. The site shall be monitored inside and outside at all times to prevent loitering or the congregating of non-customers.

**VOTE:**        **3-0-1**        (Lloyd J. Jordan, Peter G. May, Jeffrey L. Hinkle, voting to approve; Nicole C. Sorg not present, not voting; one Board seat vacant.)

**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 17, 2013

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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, 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.