

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18614 of SMC United Industrial LP, pursuant to 11 DCMR § 3104.1, for a special exception to allow the continuation of a parking lot under § 213 (last approved pursuant to BZA Order No. 17049) in the R-1-B District at premises 2310 and 2320 31st Street, N.E. (Square 4365, Lots 805 and 806).

HEARING DATES: September 24, 2013 and October 29, 2013

DECISION DATE: October 29, 2013

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 (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") 5C, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 5C, which is automatically a party to this application. The ANC filed a request dated September 18, 2013, asking that the case record be left open to allow time for the Applicant to present its application before the ANC at its October 16, 2013 public meeting and for the ANC to vote. (Exhibit 30.) At the September 24, 2013 public hearing, the Board continued the public hearing in this case to October 29, 2013 and gave the ANC leave to submit a report. Rather than an ANC report, an executed agreement dated October 18, 2013, between the ANC, the Single Member District 5C04, the Gateway Community Association, and the Applicant, was submitted to the record whereby the ANC expressed its recommendation of conditioned support of the application.¹ (Exhibit 36.)

The Office of Planning ("OP") submitted a timely report in support of the application, with conditions including a recommendation for a 10-year term. (Exhibit 29.) The District Department of Transportation ("DDOT") submitted a report recommending "no objection." (Exhibit 27.)

¹ The submitted agreement is similar to an agreement entered into with this Applicant for the previous 10-year period.

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A letter in support of the application and the agreement entered into with the ANC was submitted by Delano D. Hunter, President, Gateway Community Association. The Gateway Community Association was a signatory to the agreement between the Applicant and ANC. (Exhibit 32.)

A request for party status in opposition to the application was submitted by adjacent property owner Pamela Bundy, Managing Member, 30th Street Crescent LLC, 1350 Wallach Place, N.W. (Exhibit 26.) Ms. Bundy, who was represented by counsel, withdrew her appearance in opposition by letter dated October 28, 2013. (Exhibit 37.)

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 pursuant to § 3104.1 for a special exception under § 213. No parties appeared at the public hearing in opposition to the application.² 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 report³ filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1, 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 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 FOLLOWING CONDITIONS**:

1. Approval shall be for a period of ten (10) years from the effective date of this order.
2. The layout of the site shall be in accordance with the revised site plan marked as Exhibit 25 of the record.
3. The uses of Lots 805 and 806 shall be restricted to the following:
 - A. The parking lot is intended for use by the tenants of the adjacent warehouse to the south. No commuter parking or public parking use, other than employees of the neighborhood properties, shall be permitted at this facility at any time.

² Ms. Bundy who had filed a party status request had withdrawn that request.

³ The Board found that the ANC's concerns had been addressed and satisfied, even though the Board could not give "great weight" to the submission of the agreement with the ANC and the Applicant.

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- B. No vehicle maintenance, storage of equipment or dumping of trash or other refuse and debris shall be permitted on the site.
 - C. Access to the parking lot may remain open during tenant business hours. The lot shall be locked or access shall be otherwise automatically controlled during non-tenant business hours.
 - D. Any lots not used for parking must be chained and locked.
 - E. The parking lot surfaces shall remain paved and in good working condition.
4. Lighting shall be required at the site and shall be directed downward toward the surface of the lot.
 5. If Lots 28 and 29, located to the north of the facility and currently owned by the Applicant, are developed in the future, the Applicant shall notify the Board, and a further proceeding shall be initiated in order to consider whether and to what extent an additional landscaped buffering between the residential and commercial land use is necessary.
 6. The Applicant shall maintain signage on the lot directing all vehicles exiting the lot to turn right on 31st Street, heading south toward V Street.
 7. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an approved impervious or pervious surface.
 8. No vehicle or any part thereof shall be permitted to project over any lot or building line, or on or over the public space.
 9. All parts of the lot shall be kept free of refuse or debris and shall be paved and landscaped. Landscaping and lawn areas shall be maintained in a healthy growing condition and in a neat and orderly appearance.
 10. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
 11. The Applicant shall remove existing razor wire fencing which is located along the top of the existing fence around the parking lot.

VOTE: **3-0-2** (Lloyd L. Jordan, S. Kathryn Allen, and Marcie I. Cohen, to APPROVE;
Jeffrey L. Hinkle, not present or participating; a 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: November 7, 2013

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.