

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18770-A¹ of &pizza, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to allow a fast food establishment (first floor) under section 733, and a variance from the rear yard requirements under section 774, for a one-story rear addition to an existing building in the CHC/C-2-A District at premises 405 8th Street, S.E. (Square 902, Lot 825).²

HEARING DATES: June 10, 2014, June 17, 2014, and September 9, 2014³

DECISION DATE: September 9, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 5 and 24.)

The Board of Zoning Adjustment ("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") 6B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application. Ultimately, the ANC submitted a letter in support of the application with conditions. At first, the ANC opposed the application, per its first letter report dated May 19, 2014, citing its concerns regarding how the collection and storage of trash would exacerbate an existing serious rodent problem in the neighborhood and asked for the Board to grant the Applicant's request for a postponement so the ANC and neighbors and the Applicant could resolve the outstanding issues. In this initial report the ANC stated that it believed the Applicant's operation would exacerbate the already existing serious rodent issue in the area. (Exhibit 26.) The Applicant, with the ANC's agreement, asked for a postponement in order to

¹ This is a corrected Order of a single typo in the original Order.

² The application was revised by the Applicant. (Exhibit 24.)

³ The application was postponed from the June 10th and June 17th public hearings at the Applicant's request.

BZA APPLICATION NO. 18770-A
PAGE NO. 2

work with the ANC and neighbors on a solution.⁴ The Board granted the postponement. Subsequently, after extensive meetings and negotiations between the Applicant, the ANC and the neighbors, the Office of Planning (“OP”), the Department of Health, the District Department of Transportation (“DDOT”), and experts in the areas of noise mitigation, odor mitigation, rodentology, and trash containment procedures, the ANC submitted a second letter report, this time in support of the application and with a consolidated list of conditions, including indoor trash, noise mitigation, and odor control, that would satisfy the ANC and the neighbors. The ANC’s letter dated July 12, 2014, indicated that the ANC at a duly noticed, regularly scheduled public meeting on July 8, 2014, with a quorum present, the ANC voted 7-4-0 in support of the Applicant’s variance request and 6:4:0 to support the Applicant’s special exception request provided that the Board: (1) limit the grant of special exception to allow a fast food establishment on the first floor to a period of seven years; (2) approve the variance from the rear yard requirements for a one-story rear addition to the existing building; and (3) include in its order the enclosed list of conditions agreed to by the Applicant. (Exhibit 34.)

The Office of Planning (“OP”) submitted a report in support of the application with conditions, including a 10-year period. (Exhibit 36.) OP submitted a supplemental report dated September 2, 2014, still in support of the application but revising some of the conditions to reflect the conditions agreed to by the Applicant and the ANC, but inadvertently omitted in the first OP report. (Exhibit 37.) The Department of Transportation (“DDOT”) submitted a report and indicated it no objection to the application. (Exhibit 29.) Also according to the OP report, the Department of Health (“DOH”) has no objection to taking the refuse through the breezeway to the street for collection. (Exhibit 36.)

A letter of support was submitted to the record by Chris Floyd, who resides in the neighborhood at 6th and South Carolina, S.E. (Exhibit 38.) He also testified in support of the application.

John West and Linda Elliot of 414 7th Street, S.E., each filed applications for party status in opposition to the application, which the Board granted. Ms. Elliot testified at the September 9th hearing about the process of how the neighbors and ANC went from their initial opposition and came to agreement with the Applicant on the application and developed the proposed conditions. Both Mr. West and Ms. Elliot withdrew their opposition and changed their position to one of support at the hearing on September 9th.

There was agreement between the ANC and neighbors and the Applicant as to all the conditions but for the term of approval. A representative of the ANC appeared at the September 9th hearing in support of the application and recommended a term of seven years. That ANC representative testified that the ANC had voted to reject a 10-year term. The ANC representative further testified that some of the ANC members had wanted even fewer years. Although the Applicant had requested a 10-year term and OP agreed to that term, the ANC did not and continued to recommend a seven-year term. Ultimately, based on the record submitted, a majority of the Board chose to grant its approval of the application with a seven-year term.

⁴ In addition to the party status applications in opposition, almost 100 neighbors signed a petition opposing the project.

BZA APPLICATION NO. 18770-A
PAGE NO. 3

Variance Relief

The Board closed the record at the conclusion of the hearing. 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 variance from the rear yard requirements under § 774, to allow a fast food establishment in the CHC/C-2-A District. As the parties in opposition had changed their opposition to support, 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 together with the conditions listed therein, the Board concludes that in seeking a variance from § 774, the Applicant has met the burden of proving under 11 DCMR § 3103.2, 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 required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception from the requirements under § 733 to allow a fast food establishment. As the parties in opposition had changed their opposition to support, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, 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.

It is therefore **ORDERED THAT THIS APPLICATION IS HEREBY GRANTED SUBJECT TO THE PLANS AT EXHIBIT 40C AND WITH THE FOLLOWING CONDITIONS:**

1. Approval shall be for a period of **SEVEN (7) YEARS** from the effective date of this Order.
2. Hours of operation shall not exceed:

BZA APPLICATION NO. 18770-A
PAGE NO. 4

- a. Sundays through Wednesdays, 10:00 a.m. to 11:00 p.m.;
 - b. Thursdays, 10:00 a.m. to midnight; and
 - c. Fridays and Saturdays, 10:00 a.m. to 2:00 a.m.
3. Garbage shall be collected a minimum of six days per week, and recycling a minimum of five days per week, and adhere to the following conditions:
- a. Collections shall not occur before 7:00 a.m.;
 - b. The Applicant shall provide the garbage and recycling companies with keys to the trash enclosure;
 - c. All receptacles shall be kept within the trash enclosure only, unless being hauled to or from sanitation trucks;
 - d. All receptacles shall be secured with lids, including while within the trash enclosure and while being hauled to and from sanitation trucks. Exterior doors to the trash enclosure shall remain closed unless refuse is being hauled to sanitation trucks;
 - e. Garbage and recyclables shall be placed within receptacles within the trash enclosure only;
 - f. Garbage and recycling spills shall be cleaned as they occur;
 - g. Daily, prior to opening, the Applicant shall ensure that no debris was left within the breezeway and that the trash enclosure doors are properly shut and secure.
 - h. The trash enclosure shall be power washed weekly or more often to prevent food or grease film on the floor of the enclosure, breezeway, and receptacles; and
 - i. The Applicant shall allow DPW, DCRA and Zoning Administrator inspectors to access the trash enclosure and breezeway.
4. The Applicant shall use vent-less oven systems and install a vent-less hood system over each oven. Exhaust through the front of the building shall be maintained to a minimum.
5. No vents shall be permitted on the roof or at the rear of the property.
6. No outdoor seating shall be permitted, including the rear yard and the roof. Employees shall not be permitted to take breaks within the rear yard or the breezeway.
7. The HVAC unit at the rear of the property shall be replaced with a new HVAC unit and be relocated to the roof, with soundproofing to meet the standards employed by ArtUSA (or similar noise control product business) at 413 8th Street, S.E. The condenser/AC unit to be installed atop the trash enclosure shall meet the same soundproof standard. No additional mechanical equipment shall be installed on the roof or at the rear of the property.
8. The trash enclosure (as depicted in the plans in Exhibit 40C) shall include a trash compactor, cardboard baler (as depicted in Exhibit 40E), and odor control unit to be constructed as proposed. The trash enclosure shall comply with the recommendations

BZA APPLICATION NO. 18770-A
PAGE NO. 5

contained in the rodentologist report dated May 22, 2014, (Exhibit 40D), except for nos. 12, 15, and 16, which are not applicable to this site.

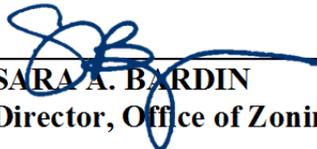
9. Deliveries shall be made through the front only. No deliveries shall be made through the breezeway.
10. The Applicant shall frequently remove trash and debris from the sidewalk to the front of the property and power wash this area regularly.

VOTE: **4-1-0** (Lloyd J. Jordan, Marnique Y. Heath, S. Kathryn Allen, and Jeffrey L. Hinkle, to APPROVE; Marcie I. Cohen, opposed).

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 19, 2014

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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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

BZA APPLICATION NO. 18770-A
PAGE NO. 6

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 THEREOF, 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.