

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19076 of Kelly Gorsuch, pursuant to 11 DCMR § 3103.2, for a variance from the use requirements under § 330.5, to allow the conversion of a one-family dwelling into a restaurant in the R-4 District at premises 1544 9th Street N.W. (Square 365, Lot 813).

HEARING DATE: October 6, 2015

DECISION DATE: October 6, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated June 15, 2015, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for the following:

“Variance from § 330.5 to convert a Single-Family Dwelling to a Restaurant in the R-4 Residential District. (§ 3103.2).”

(Exhibit 5.)

The Board of Zoning Adjustment (“Board” or “BZA”) 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”) 6E and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6E, which is automatically a party to this application. At the hearing, ANC 6E filed a letter report, dated October 5, 2015, which indicated that at a properly noticed, regularly scheduled public meeting held on September 1, 2015, with a quorum present, the ANC voted 6 in favor:0 opposed :1 abstention to support the application with seven conditions. (Exhibit 26.)

The Office of Planning (“OP”) submitted a timely report of support for the application with three conditions. (Exhibit 23.) By its letter, dated September 29, 2015, the District Department of Transportation (“DDOT”) submitted a timely report of “no objection” to the application. (Exhibit 25.)

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 19076
PAGE NO. 2

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 § 3103.2 for a variance from the use requirements under § 330.5, to allow the conversion of a one-family dwelling into a restaurant in the R-4 District. The only parties to the case were the ANC and the Applicant. 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.

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 proving under 11 DCMR § 3103.2 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 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 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 be **GRANTED SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 AND THE FOLLOWING CONDITIONS:**

1. All trash and recyclables shall be stored within the fenced rear yard, with collection from Q Street only. Collection of all refuse shall take place only between 9:00 a.m. and 9:00 p.m. to avoid disturbing adjacent residential neighbors. No recyclables shall be placed within dumpsters between 9:00 p.m. and 9:00 a.m. to protect adjacent residential neighbors from excessive noise.
2. No outdoor seating or parking shall be permitted within rear yard.
3. Only the evening meal shall be served, by reservation only, with no more than two seatings per evening. One table may be left open each evening for neighborhood residents without a reservation. Trash and recyclables, including waste oil, shall be stored in the fenced area at the west of the building, with all trash service being accomplished from that rear location. No trash or recyclables shall be stored in public space on either 9th or Q Streets, N.W., regardless of whether said space is considered "parking" and maintained by the property owner under an easement.
4. No vehicles associated with the property, the business, or any parties, including the owners and employees, shall be parked on public space on the 9th or Q Streets, N.W., sides of the property, or in the vacant area on the west side of the building on the property

BZA APPLICATION NO. 19076
PAGE NO. 3

at any time. No Residential Parking Permit(s) shall be applied for or issued to any vehicles registered at the address 1544 9th Street, N.W.

5. The Applicant shall engage a valet parking service to provide parking for the restaurant's customers during all hours of operation.
6. Any alterations of the exterior of the building at 1544 9th Street, N.W., and any signage for the restaurant shall be approved by the DC Office of Planning's Historic Preservation Office, as the property is located within the boundaries of Shaw Historic District.
7. The green space "parking" area on the Q Street side of the building at 1544 9th Street, N.W. shall not be used for outdoor seating for the restaurant, but instead shall be maintained as a green space, including a garden where herbs and vegetables for use in the restaurant's kitchen may be grown. If the green area at the rear of the property is to be fenced, the Applicant shall seek approval from the DC Office of Planning's Historic Preservation Office, and said fencing shall be of a character consistent with historic fencing found in the Shaw Historic District.
8. The curb cut on the Q Street side of the property shall be eliminated and restored to its normal original condition, at the property owner's sole expense, including costs of permits and all construction necessary to accomplish this work.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

VOTE: **3-0-2** (Marnique Y. Heath, Marcie I. Cohen, and Frederick L. Hill, to Approve; Jeffrey L. Hinkle, not participating or voting; the third Mayoral appointee 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: October 8, 2015

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-

BZA APPLICATION NO. 19076
PAGE NO. 4

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 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.