

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17600-B of Fort Totten North, L.L.C., pursuant to 11 DCMR § 3104.1, for a special exception from the fast food establishment requirements pursuant to § 733, to permit three fast food establishments in the C-2-A District at premises 300-320 Riggs Road N.E. (Square 3748, Lot 52).

HEARING DATE: February 23, 2016

DECISION DATE: February 23, 2016

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.) In its Prehearing Statement, the Applicant noted that one of the originally proposed tenants decided not to open in the project, but indicated that the Applicant will be seeking a future fast food establishment tenant in the same retail space. (Exhibit 29.) Accordingly, no amendment to the originally requested relief was required.

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") 4B, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 4B, which is automatically a party to this application. The ANC submitted a report dated February 5, 2016 indicating that at its regularly scheduled and properly noticed public meeting of February 4, 2016, at which a quorum was in attendance, ANC 4B voted 7-0 to support the application with three conditions.¹ (Exhibit 30.)

The Office of Planning ("OP") submitted a report on February 8, 2016, recommending approval of the application. (Exhibit 27.) OP also testified in support of the application at the public hearing. The District Department of Transportation ("DDOT") submitted a report on February

¹ The Board did not adopt the proposed conditions as part of its order after receiving advice from counsel that the conditions were outside the scope of the Board's jurisdiction.

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16, 2016 indicating that it had no objection to the Applicant's request for special exception relief. (Exhibit 31.)

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 exceptions from § 733, to permit three fast food establishments in the C-2-A District. 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 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 § 3125.5, 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**.

VOTE: 3-0-2 (Marnique Y. Heath, Marcie I. Cohen, and Frederick L. Hill to APPROVE; Jeffrey L. Hinkle not participating and one Board seat vacant.)

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 25, 2016

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.

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

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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.