

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18044 of Rock Creek Market, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to allow the sale of prepared food at an existing grocery store under § 330.5, in the R-4 district at premises 644-646 Rock Creek Church Road, N.W. (Square 3034, Lot 809).

HEARING DATE: March 9, 2010

DECISION DATE: March 9, 2010 (Bench Decision)

SUMMARY ORDER DISMISSING APPLICATION

On December 29, 2009, Rock Creek Market, LLC (“Applicant”) submitted an application for a variance from the use provisions under § 330.5 to allow sales of prepared food, such as hot beverages, pastries, and cold and grilled panini sandwiches, at a grocery store operated by the Applicant at the subject property. By letter dated October 22, 2009, the Zoning Administrator disapproved the Applicant’s request for a certificate of occupancy to use the premises as a “prepared food shop/grocery” because the proposed use was not permitted in the R-4 district, and directed the Applicant to seek approval of a variance for the proposed use by the Board.

The Office of Zoning provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* (57 DCR 510), by memoranda dated January 8, 2010 to the Office of Planning, the District Department of Transportation, and the Councilmember for Ward 1, and by mail to Advisory Neighborhood Commission (“ANC”) 1A, the ANC in which the subject property is located, to single-member district ANC 1A08, and to owners of property within 200 feet of the subject property. Parties in this proceeding are the Applicant and ANC 1A, which did not submit a report or testify at the public hearing. There were no requests for party status.

By memorandum dated March 2, 2010, the Office of Planning (“OP”) recommended approval of the requested use variance to allow a prepared food shop as an accessory use within the existing grocery store, a nonconforming use. OP also noted that the application was similar to a prior case, BZA Application No. 17906, in which the Board dismissed an application seeking permission to add the sale of certain prepared foods to an existing nonconforming grocery store in an R-4 district on the ground that no zoning relief was necessary.

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Application No. 17906 of Se Y. Jeong concerned a self-certified request for a special exception under §§ 2002 and 2003 to change a nonconforming use in an R-4 zone from a grocery store to a "grocery store with delicatessen" that would offer the sale of prepared sandwiches, doughnuts, hot coffee, and cooked hot dogs in addition to the existing groceries. By order issued August 11, 2009, the Board dismissed that application on the ground that no zoning relief was required because the sale of the prepared items did not constitute an "expansion" of the grocery use, but was an inherent part of a grocery store use.

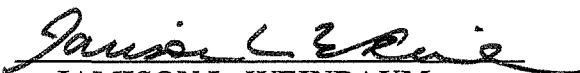
For the same reason, the Board concludes that the Applicant's proposal to offer certain prepared foods, such as hot beverages, pastries, and cold and grilled panini sandwiches, at an existing grocery store does not require zoning relief. The Applicant's proposed limited addition of prepared foods to the store's existing inventory of groceries constitutes a normal, customary part of the grocery store business, and will not convert the use to prepared food shop or otherwise alter the principal grocery store use of the property.

Based upon the record before the Board and having given great weight to the recommendation of OP,¹ the Board concludes that the Applicant does not require zoning relief. Accordingly, it is therefore **ORDERED** that the application for a variance from the use provisions under § 330.5 to allow the sale of certain prepared foods at an existing grocery store in the R-4 district at 644-646 Rock Creek Church Road, N.W. (Square 3034, Lot 809) is **DISMISSED**.

VOTE: **4-0-1** (Marc D. Loud, Meridith H. Moldenhauer, Nicole C. Sorg, and
Peter G. May voting to dismiss the application; Shane L.
Dettman not present, not voting)

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

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

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: **APR 22 2010**

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR

¹ ANC 1A did not participate in this proceeding, and therefore the Board is unable to give great weight to any issues and concerns raised by the affected ANC.

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§ 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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As Director of the Office of Zoning, I hereby certify and attest that on APR 22 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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BOARD OF ZONING ADJUSTMENT
District of Columbia

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ATTESTED BY:


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Director, Office of Zoning

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