

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18147 of Eun Sun Kim, pursuant to 11 DCMR § 3104.1, for a special exception to allow a fast food establishment under section 733, in the C-2-A District at premises 1100 Eastern Avenue, N.E. (Square 5200, Lot 805).

HEARING DATE: December 7, 2010
DECISION DATE: December 14, 2010

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The Application was accompanied by a letter, dated September 24, 2010, from the Zoning Administrator, disapproving the Applicant's request for a new certificate of occupancy and referring the Applicant to the Board of Zoning Adjustment ("BZA" or "Board") for a special exception under § 733 of the Zoning Regulations to establish a fast food establishment in a C-2-A Zone District.¹ (Exhibit 4.)

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") 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application.

The Board did not receive a report from ANC 7C in this proceeding. The ANC representative of Single Member District ("SMD") 7C04 submitted a letter dated, December 3, 2010, stating her concerns about the application and requesting that the Applicant take certain actions to alleviate those concerns. The ANC representative acknowledged that her letter would not receive "great weight," as the ANC had not had a quorum at its October or November meetings and would not meet in December. (Exhibit 26.) The SMD representative also testified at the hearing that she was working with the Applicant to satisfy the concerns she had raised.

¹ The Board noted that the Applicant was a new leasee of the property who required a new certificate of occupancy. The property owner submitted a letter authorizing the Applicant to pursue the application herein. (Exhibit 21.)

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The Office of Planning (“OP”) submitted a timely report, dated November 30, 2010, indicating that OP was unable to recommend approval until the Applicant clarified certain issues. (Exhibit 25.)

In response to the concerns raised by the ANC SMD representative and OP, the Board requested that the Applicant provide additional information by December 9, 2010, and left the record open solely for that submission. The Board requested that the Applicant submit additional information to supplement the record.

The Applicant submitted the requested supplemental information and committed to work with the ANC and SMD representative as it moved forward with its plans. (Exhibit 30.)

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 exception under § 733. 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 report, 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 § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED WITH THE FOLLOWING CONDITIONS**:

1. The Applicant’s hours of operation shall be from 8:00 a.m. to 8:00 p.m.
2. The Applicant shall improve the condition of the existing chain link with wood-slat fence that surrounds the refuse dumpster in accordance with the agreement of ANC 7C. Provided that the fence is improved in accordance with the agreement of ANC 7C, the Applicant may waive the requirement in 11 DCMR § 733.4 for a three-sided brick enclosure.
3. The Applicant shall remove all guard railings from the property.
4. The Applicant shall have the trash picked up at least once a week.

VOTE: **3-0-2** (Jeffrey L. Hinkle, Konrad W. Schlater, Nicole C. Sorg (by absentee vote) to APPROVE. Meridith H. Moldenhauer and one other Board member (vacant) not participating, nor voting.)

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

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

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 17 2010

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.

PURSUANT TO 11 DCMR § 3205, 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, STATUS AS A VICTIM OF AN INTRAFAMILY OFFENSE, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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DEC 17 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Peter H. Jung
1100 Eastern Avenue, N.E.
Washington, D.C. 20001

Chairperson
Advisory Neighborhood Commission 7C
4651 Nannie Helen Burroughs Avenue, N.E., #2
Washington, DC 20019

Single Member District Commissioner 7C04
Advisory Neighborhood Commission 7C
920 52nd Street, N.E.
Washington, D.C. 20019

Yvette Alexander, Councilmember
Ward Seven
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Washington, D.C. 20004

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ATTESTED BY:


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