

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18362 of Chicken to Go Inc., pursuant to 11 DCMR § 3104.1, for a special exception to operate a fast food establishment under § 733, in the C-2-A District at premises 2427 Minnesota Avenue, S.E. (Square 5578, Lot 74).

HEARING DATE: June 19, 2012
DECISION DATE: June 19, 2012

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated February 3, 2012, from the Zoning Administrator stating that the Applicant's application for a Certificate of Occupancy to use a portion of the subject premises as a fast food establishment was disapproved due to the need for Board of Zoning Adjustment ("BZA" or "Board) approval of a special exception, pursuant to 11 DCMR §§ 3103.2 and 733 to establish this use in the C-2-A Zone District. (Exhibit 6.)

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 the Applicant, Advisory Neighborhood Commission ("ANC") 8A, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 8A, which is automatically a party to this application. The ANC did not submit a report nor appear to testify at the hearing on the application.

The Office of Planning ("OP") submitted a timely report in support of the special exception application. In its report OP stated that while the prior business at this location had been subject to four conditions pursuant to BZA Order No. 17800, OP did not recommend any conditions in this case. OP also indicated in its report and testified that it had been in conversation with an ANC Commissioner. (Exhibit 31.) The District Department of Transportation ("DDOT") submitted a letter of no objection to the requested relief. (Exhibit 30.)

As a preliminary matter, the Board took up the issue of a letter of authorization from the property owner to give the Applicant the authority to pursue the case on the owner's behalf pursuant to 11 DCMR § 3113.4. According to the OP report, Todd Norris on behalf of the owner Minnesota Corner LLC informed OP that Monir Patwary, who Mr. Norris previously had authorized as the property owner's representative, (Exhibit 7), was no longer the owner's

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18362

EXHIBIT NO. 36

Board of Zoning Adjustment
District of Columbia
CASE NO.18362
EXHIBIT NO.36

BZA APPLICATION NO. 18362
PAGE NO. 2

representative. At the hearing, the Board learned that the owner through Mr. Norris had authorized Julie Kim (Gyung Kim), or her designee, to act on behalf of the property owner. Testimony to this effect was provided by Ms. Kim; Mr. Kim, Ms. Kim's husband; and an employee of the Applicant, Ms. Sharon Jackson, at the public hearing. They also provided a signed letter of authorization from Mr. Norris at the hearing. (Exhibit 33.) Based on the testimony and the letter in Exhibit 33, the Board waived¹ the requirements of § 3113.4 which requires a letter of authorization from the property owner for its authorized agent to pursue an application before the Board.²

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 requirements 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 the application is hereby **GRANTED**.

VOTE: **5-0-0** (Lloyd L. Jordan, Nicole C. Sorg, Rashida Y.V. MacMurray, Jeffrey L. Hinkle, and Michael G. Turnbull, to Approve.)

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

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

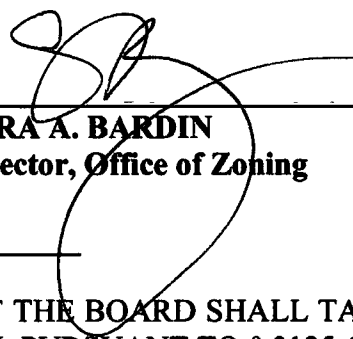
¹ The Board approved a waiver of the requirements of § 3113.4 and found the letter at Exhibit 33 sufficient to grant authorization by a vote of 5:0:0 (Lloyd J. Jordan, Jeffrey L. Hinkle, Nicole C. Sorg, Rashida Y.V. MacMurray, and Michael G. Turnbull, to Approve).

² Subsection 3113.4 states:

An authorized agent may file an application on behalf of the owner. The application shall include a letter signed by the owner authorizing the agent to act on the owner's behalf in respect of the application. The Board may at any time require additional evidence demonstrating the authority of the agent to act for the owner.

BZA APPLICATION NO. 18362
PAGE NO. 3

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: **JUN 22 2012**

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 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.