

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18410 of Massage Escape Spa Company, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the floor area ratio (§ 771.2) requirements and a special exception for a massage establishment under § 731 and § 1533.1 in the NO/C-2-A District at premises 2352 Wisconsin Avenue, N.W. (Square 1300, Lot 425).¹

HEARING DATE: October 2, 2012
DECISION DATE: October 2, 2012

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibits 6 and 27.)

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") 3B and to owners of property within 200 feet of the site as well as to the Office of Planning ("OP"). The site of this application is located within the jurisdiction of ANC 3B, which is automatically a party to this application. ANC 3B was neither present at the hearing nor submitted a report.² The Office of Planning ("OP") submitted a timely report dated September 25, 2012 recommending approval of the application. (Exhibit 36.) The District Department of Transportation ("DDOT") submitted a report of "no objection." (Exhibit 34.) The Department of Housing and Community Development ("DHCD") submitted a report of support. (Exhibit 32.)

¹ The Applicant amended the application to include, pursuant to § 3103, a use variance from the floor area ratio ("FAR") requirements under § 771.2, for a portion of the property zoned residential (0.05 FAR), as well as a special exception under § 731 and Naval Observatory Overlay (§ 1533.1), which was not captioned but was requested by the Applicant. (Exhibit 27.) The caption, as advertised, has been amended accordingly.

² OP, in its report and testimony, indicated that it had communicated with the Single District Commissioner for the property and that ANC 3B had the application before it, but declined to comment. According to OP, the ANC expressed no opposition and believed that the Applicant's business would be a good neighbor. (Exhibit 36.)

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BOARD OF ZONING ADJUSTMENT
District of Columbia
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EXHIBIT NO. 39

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Variance Relief

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 § 3103.2, for a use variance from the floor area ratio ("FAR") requirements under § 771.2. 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 report³ 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 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.

Special Exception Relief

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 relief under §§ 731 and 1533.1 of the Zoning Regulations. 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 filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 731, and 1533.1, 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. 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, SUBJECT** to the plans at Exhibit 13.

VOTE: 4-0-1

(Lloyd J. Jordan, Michael G. Turnbull, Nicole C. Sorg, and Jeffrey L. Hinkle to **Approve**. Rashida Y.V. MacMurray, not participating, not voting.)

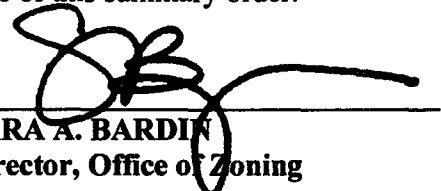
³ The ANC did not submit a report; consequently, there was no ANC report to which to give great weight.

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 12, 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 TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-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 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL 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.

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

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**PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT
BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.**