

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18546 of Manny & Olga's Pizza, pursuant to 11 DCMR § 3104.1, for a special exception to allow a fast food establishment under § 1320.4(c)(3), in the HS-A/C-3-A District at premises 1409 H Street, N.E. (Square 1049, Lot 25).¹

HEARING DATE: May 7, 2013

DECISION DATE: May 7, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated February 5, 2013, from the Zoning Administrator, which stated that Board of Zoning Adjustment ("Board" or "BZA") approval is needed for a special exception² to use the subject premises as a "Fast food establishment", pursuant to 11 DCMR § 3104.1. (Exhibit 5.)

The Board of Zoning Adjustment (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") 6A, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report dated April 17, 2013, which indicated that the application came before the ANC on April 11, 2013, at a duly noticed, regularly scheduled monthly public meeting at which a quorum was present. At the meeting the ANC voted unanimously (8:0) to support the application, noting that the Applicant had committed to the ANC that it would keep trash dumpsters and cans entirely on their property, join a business improvement district for the H Street corridor if one is created,

¹ On its own motion, the Board amended the application to allow a fast food establishment under § 1320.4(c)(3) with the concurrence of the Office of Planning ("OP") which had cited § 733 in its report. The Board also had discussed whether special exception relief from § 743.4 was required, but determined that relief under § 1320.4(c)(3) was more appropriate. The caption has been changed accordingly.

² The Zoning Administrator mistakenly had cited § 1302.4, but as noted herein the application was amended to bring it under the correct provision of 11 DCMR § 1320.4(c)(3).

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keep the public space in front of the property clean, and prevent the Applicant's vehicles from double-parking. (Exhibit 27.)

The Office of Planning ("OP") submitted a timely report dated April 23, 2013, in support of the application subject to its recommendations for four conditions. (Exhibit 30.) The District Department of Transportation ("DDOT") submitted a report of "no objection" subject to conditions. (Exhibit 25.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under §§ 3104.1 and 1320.4(c)(3) from the strict application of the regulations to allow a fast food establishment. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 1320.4(c)(3), 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, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 11 AND THE FOLLOWING CONDITIONS:**

1. All loading for the fast food establishment shall occur at the rear of the building, with delivery vehicles backing into the alley, and pulling head-out onto 14th Street, N.E.
2. Garbage pick-up shall occur at the rear of the building from the public alley.
3. The Applicant shall store all refuse within a securely closed metal mini-dumpster, or a group of securely closed metal 95-gallon waste receptacles. Refuse containers shall be behind a chain link fence with opaque infill or a wooden fence and remain within the Applicant's lot at all times other than one hour before and one hour after the five-day-a-week refuse pickup that the Applicant shall schedule with a private service.
4. Business operations of the site shall not block vehicular access to any portion of the public alley.

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen, and Michael G. Turnbull to Approve; Jeffrey L. Hinkle, not participating or voting, one Board seat vacant.)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 15, 2013

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.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. 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.

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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.