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MEMORANDUM

TO: District Board of Zoning Adjustment

FROM: Stephen Cochran, Case Manager
Joel Lawson, Associate Director Development Review

DATE: April 23, 2013

SUBJECT: BZA Application #18546 – Request for special relief pursuant to §§ 733 1 and 3104 to allow a fast food establishment at 1409 H Street, N E in the HS-A/C-3-A Zone District

I. OFFICE OF PLANNING RECOMMENDATION

Tsurunaki, LLC has applied for zoning relief to permit the operation of a fast food establishment (Manny and Olga's Pizza at 1409 H Street, N E) The applicant was referred to the Office of Zoning by the Zoning Administrator Relief is required because a fast food establishment is not permitted by-right in C-2-A, and because the applicant is not proposing a conforming trash enclosure

The Office of Planning (OP) **recommends approval** of this special exception application pursuant to §§ 733.1 and 3104, with a modification to the conditions of § 733 4 pursuant to § 733 12, **subject to the following conditions**, to which the applicant has agreed:

- 1 *All loading for the fast food delivery service 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, unless it is otherwise not feasible, in which case the applicant shall work with the District Department of Transportation (DDOT) to develop an alternative location*
- 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 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*

II. AREA AND SITE DESCRIPTION

		BOARD OF ZONING ADJUSTMENT District of Columbia
Address	1409 H Street, NE	CASE NO. <u>18546</u>
Legal Description	Square 1049, Lot 25 (hereinafter, the "Property")	EXHIBIT NO. <u>30</u>
Ward/ANC	6 / 6A	
Lot Characteristics	The flat, approximately 802 square foot interior lot is an irregular shape consisting of a 12.46 foot wide, 62.73 foot long rectangle, with a 3.25 foot deep by 12.46 wide triangular section at the rear The front of the lot is on the south side of H Street, N E and the rear lot line is adjacent to a 10 foot wide public dead-end alley The existing structure fully occupies the rectangular portion of the site, but not the triangle at the rear The existing building to the west encroaches 1.15 foot into the applicant's lot, beginning at a point 41.22 feet from the H Street property line	
Zoning	HS-A/C-3-A: medium bulk mixed-use, H Street Overlay Arts Sub-District	

Existing Development:	The Property is developed with a currently-vacant two story building with an occupancy permit for a barber shop on the first floor. It was recently enlarged with a one-story, 100 square foot addition in the rear, increasing its footprint from 525 gross square feet to 625 gross square feet. The second floor is unused.
Historic District:	None
Adjacent Properties:	Similarly-sized two story buildings with ground-floor commercial uses. Immediately to the south of the Property, fronting on Maryland Avenue, N.E. is a gas station and convenience store that was approved by BZA Order No.17825 in 2009.
Surrounding Neighborhood Character:	The location is at the eastern end of the mixed-use H Street, N.E. corridor, which is increasingly popular for night-time uses and will soon be served by a trolley line. The applicant's side of the 1400 block of H Street, N.E. has two and three story buildings on small lots, with primarily commercial uses on the first floor. The closest residential zone is approximately 350 feet to the south, across both Maryland Avenue and G Street, N.E. There are 4 residentially-used row houses to the south, also zoned HS-A/C-2-A, across the alley and two lots to the east of the Property.

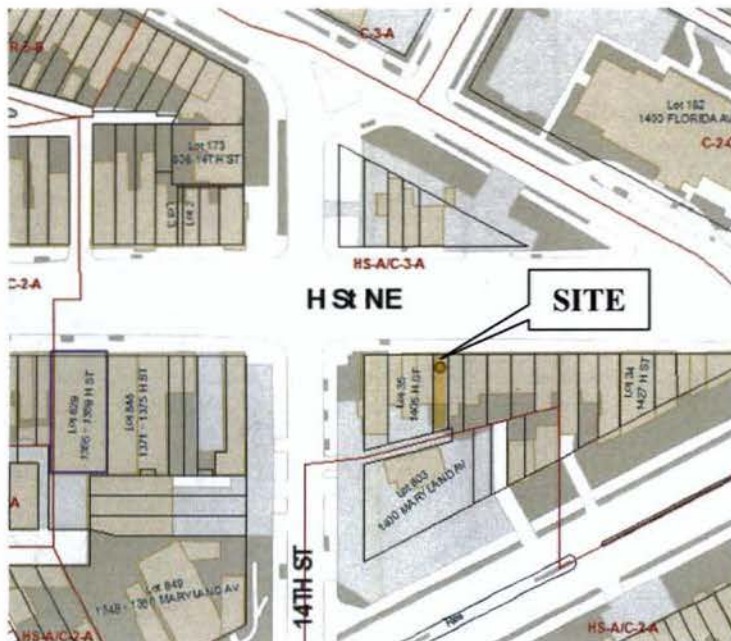


Figure 1. Site Location

III. PROJECT DESCRIPTION IN BRIEF

Applicant:	Tsurunaki, LLC
Proposal:	The applicant has recently constructed a 100 square foot one-story addition at the rear of the existing building to contain refrigeration equipment for a commercial operation. The applicant proposes to lease the first floor of the property to a pizza-oriented fast-food carry-out and delivery. There will be no seating. The proposed hours of operation would be 10: a.m. to 4:a.m. Monday through Thursday, 10:00 a.m. through 5 a.m. on Friday, Saturday and Sunday morning, and 11:00 a.m. to 4:00 a.m. on Sunday and Monday morning. Deliveries would be loaded from the alley at the rear. No parking spaces are required or provided for customers, the two anticipated employees, or the delivery vehicle(s).
Relief:	§§ 733.1 and 3104, special exception to permit a fast food establishment

IV. RELIEF REQUESTED

Item	Reg.	Required / Permitted	Existing	Proposed	Relief
Lot Area	none	n/a	802.15 sf	Same	conforms
Lot Width	none	None	12.46 ft. x approx. 63 ft.	same.	conforms
Lot Occ.	772.1	100%	Approximately 77.9%	same	conforms
FAR	771.2	4.0	< 4.0 total(< 2.5 non-residential)	unclear	conforms
Height		65 ft.	Approx. 22 ft.	same	conforms
Roof Structure	411.5	Not relevant	0	none	conforms
Parking	2101.1	0	0	0	conforms
Loading	2202.1	0	0	0	conforms
Rear Yard	774.9 (a)	None below 20ft. Lot abuts alley	Approx. 23 ft.	Average depth is > 20 ft. above 20 foot height	conforms
Side Yard	775.5	Not required	none	none	n/a
Open Ct.	776.1	none	none	none	n/a
Trash Encl.	1320.4 733.4	3-sided brick enclosure with opaque gate; the taller of 6 ft. or height of dumpster	Not known		Modification of § 733.4
25% limitation	1320.4	Use is < 25% of all H St HS frontage	Not relevant	Not evaluated	Needs demonstration
Distance to Res. Zone	1320.4	Greater than 25 ft.	Greater than 300 feet	Same	conforms

Fast food establishments are permitted in HS-A/C-3-A Districts as a special exception if approved by the BZA under § 3104, subject to the provisions of § 733.1 *et. seq.* Additionally, an Applicant may request a modification to the conditions listed in §§ 733.2 --773.4, provided "the general purposes and intent of this section are complied with."

Special Exception (§§ 733.1 and 3104)

733 *No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District unless separated therefrom by a street or alley;*

The property is separated by one alley and two streets from the nearest residential zone, which is approximately 350 feet away.

734 If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot;

This provision is not applicable

735 Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a residence District;

The unoccupied portion of the site is a triangle measuring approximately 3 25 feet by 12 46 feet by 13 feet. The applicant states that this area's size and shape, and the location of utility poles and guy wires, make it impossible to locate the required dumpster and enclosing walls within this space

The applicant requests modification of the condition in § 733 4, in order to

- Use either a mini-dumpster or a 95-gallon containers, rather than a full-size dumpster,
- Be relieved of the enclosure requirements

The applicant states that

- It or its tenant will contract for trash collection five (5) days per week and
- The gasoline station/convenience store located on the other side of the alley from the rear of the applicant's property already has a brick screening wall, and that the combination of those buildings and the wall would substantially screen the applicant's refuse containers from adjacent properties.

OP is, nonetheless, concerned about the potential impacts of the applicant's refuse storage and screening modification requests. After consultation with the applicant's architect, OP recommends that Condition 3 on the first page of this report be part of an approval of the request for a modification of § 733 4's condition

736 The use shall not include a drive-through.

The use would not include a drive-through

733.6 There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a Residence District.

The proposal would meet these requirements

733.7 The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions.

The proposed fast food use is not likely to become objectionable to neighboring properties. It would operate similarly to other fast food restaurants along H Street, N E., with the possible exception of having longer hours of operation. The proposed hours of operation would be 10 a.m. to 4 a.m. Monday through Thursday, 10:00 a.m. through 5 a.m. on Friday, Saturday and Sunday morning, and 11:00 a.m. to 4:00 a.m. on Sunday and Monday morning. OP is not aware of any filings in the record that have expressed concern about the hours, and notes that the ANC is in support of the application

733.8 The use shall provide sufficient off-street parking, but not less than that required by § 2101.1, to accommodate the needs of patrons and employees.

The proposed use and size would not generate a parking requirement

733.9 The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions.

Deliveries would be loaded, back-in/front-out from the ten-foot wide alley at the rear. No patron or employee parking is required, given the small size of the building. There are not yet provisions for the parking of the applicant's delivery vehicle(s).

While DDOT has determined that the granting of the application would not likely have a significant impact on the District's transportation network, it has noted that

- DDOT would not likely support a reserved curb space or designated loading zone for the operation,
- Double parking is not permitted on H Street for customers, loading or deliveries; and
- Parking is not permitted in the alley

Accordingly, DDOT has recommended that Conditions Number 1, 2 and 4 on the first page of this report be attached to any Board approval of the application.

733.10 There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site.

With the conditions recommended on page one of this report, the use is not likely to obstruct public right-of-ways or parking spaces, aisles, or driveways.

733.11 The Board may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property.

The recommended conditions are on the first page of this report.

V. OTHER AGENCIES COMMENTS

DDOT, by letter dated March 28, 2013, expressed no objection to the application, provided Conditions 1, 2 and 4 on the first part of this report are adopted.

VI. ANC/COMMUNITY COMMENTS

ANC 6D voted on April 11, 2013, to recommend approval of the application. At the time this OP report was written, there were no other comments on file.