

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

STATEMENT OF REASONS IN SUPPORT OF AN APPLICATION FOR A SPECIAL EXCEPTION FOR
A FAST FOOD ESTABLISHMENT UNDER 11 DCMR § 733
FOR 2233 WISCONSIN AVENUE N.W., SQUARE 1299, LOT 1006

This Statement of Reasons is submitted on behalf of the applicant, Einstein and Noah Corp. (the "Applicant"), the lessee of the subject property (the "Property"). The Applicant seeks approval of a special exception pursuant to 11 DCMR § 733 to operate a fast food establishment, an Einstein Bros. Bagel shop, on the first floor of an existing commercial office building located in the NO/C-2-A Zone District at 2233 Wisconsin Avenue N.W.

THE PROPERTY AND THE SURROUNDING NEIGHBORHOOD

Property Description and current use. The Property is located on the east side of Wisconsin Avenue, N.W. between W Place N.W. and Calvert Street N.W. The Property is classified within the Naval Observatory ("NO") Precinct District and the C-2-A Zone District and contains approximately 72,601 square feet of land area. The Property is currently improved with a five-story commercial office building with ground-floor retail and underground and surface vehicle parking. The Property is subject to BZA Order No. 16840, which authorized a motor scooter sales establishment in a portion of the space that the Applicant seeks to occupy. This space is currently vacant, as the Vespa scooter dealership previously approved by the Board has now closed.

The Surrounding Neighborhood. The Property is located in Glover Park, immediately west of the Naval Observatory. To the south is another five-story commercial building; to the north is a series of two story commercial structures. Across Wisconsin Avenue is a series of

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one- and two-story retail and commercial buildings. Beyond the commercial buildings on the west side of Wisconsin Avenue is a low-scale neighborhood of row and semi-detached dwellings.

Zoning. The Property is classified within the Naval Observatory Precinct District ("NO") and the C-2-A Zone District, which zones continue to the north and south along Wisconsin Avenue between Calvert Street and W Place.

PROPOSED USE OF THE PROPERTY

The Applicant seeks to occupy an existing ground-floor retail space of approximately 3,037 square feet within the existing building at 2233 Wisconsin Avenue to operate an Einstein Bros. Bagel shop. The Applicant is the largest operator of bagel bakeries in the U.S. and a leader of the quick casual segment of the restaurant industry. Most of the product the Applicant sells is delivered twice weekly by truck in frozen form, and baked or assembled on the premises. The Zoning Administrator has advised the Applicant that its operation is considered a fast food establishment rather than a prepared food shop or a restaurant because Einstein does not use non-disposable utensils and serving ware, and because Einstein uses several types of equipment to warm and otherwise assemble the food it sells, including a Panini press, a soup heater/warmer, and convection oven. The Applicant proposes an occupancy of 55 seats indoors, with an additional 28 seats in an outdoor café in the Public Space (for which separate Public Space Permits will be obtained). The store will operate between the hours of 5:30 a.m. and 5:00 p.m. A total of 30 parking spaces in the surface parking area on the rear of the Property will be reserved for the Applicant's use.

SPECIAL EXCEPTION CRITERIA

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The Board is authorized to grant a special exception where it finds:

- (1) The proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Zone Maps; and
- (2) The proposed use is not likely to adversely affect the use of neighboring property,

subject to the specific conditions specified in the Zoning Regulations for the particular special exception use. 11 DCMR § 3104.1. The BZA's discretion in reviewing an application for a special exception is limited to a determination of whether the applicant has complied with requirements enumerated in the specific section of the Zoning Regulations pursuant to which the applicant is seeking the special exception. If the applicant meets this burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

The Proposed Use is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zone Maps. The Property is located in an area which is characterized predominantly by low- to moderate- density commercial buildings with ground floor retail. The proposed development will result in the reactivation of currently dark retail spaces along the street front and the addition of an active sidewalk café, but will result in no other exterior changes. Although deemed a fast-food establishment, Einstein's restaurant operation is consistent with other restaurant operations along Wisconsin Avenue in Glover Park, and would be in harmony with existing uses on the Property and on neighboring property. Accordingly, no

special treatment in the way of design, screening of buildings, accessory uses, signs, or other facilities is necessary to protect the value of neighboring property as a result of the Applicant's proposed use of the Property.

The Proposed Use is Not Likely to Adversely Impact Neighboring Property. The Applicant's proposed use includes a significant number of off-street parking spaces reserved for staff and patrons of the restaurant, includes adequate provisions for the storage and removal of trash, and requires only twice weekly deliveries of supplies from Einstein's central distribution channels.

No part of the lot on which the fast food establishment is located shall be within 25 feet of a Residence District.

The Property is not located within 25 feet of a Residence District.

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

All refuse will be stored within the building.

The use shall not include a drive-through.

No drive-through is proposed.

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 Property does not abut a Residence District or a zone district boundary line for a Residence District.

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 entire restaurant operation will be located inside the building. All outdoor use will be confined to an approved sidewalk café, which will be located along a busy commercial street.

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 Applicant will have the exclusive right to use 30 of the more than 90 surface parking spaces on the Property. 11 DCMR § 2101 requires one parking space per 100 square feet in excess of 1,500 square feet for fast food uses, or in this case, approximately 15 parking spaces. The use provides more parking than is required by § 2101.1 for the use of patrons and employees.

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

The use is located along a commercial corridor and contains significant off street parking. No dangerous or objectionable traffic conditions are likely to occur as a result of the location of Einstein on the premises.

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.

Deliveries will be made by Einstein and Noah Corp. on a twice-weekly basis at very early morning hours, most often coinciding with restaurant opening at 5:00 a.m. Deliveries are likely to take place from the east side of Wisconsin Avenue well before the morning rush hour takes

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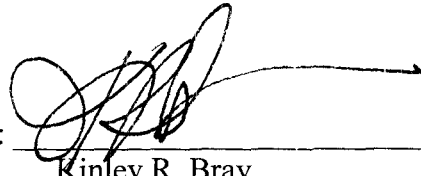
place on the west side of the Avenue. Deliveries will not unreasonably obstruct parking spaces, aisles, or driveways on the site. Likewise, trash will be removed from the premises along with the remainder of the trash from the commercial office building in which it is located, and will not require any additional trash pick-ups.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that, upon receipt of all of the Applicant's proof and all other support of record for the special exceptions requested, such relief be granted.

Respectfully submitted,

ARENT FOX LLP

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EXHIBIT LIST

- A. Application Form & Letter of Authorization
- B. Self-Certification Form
- C. Plat
- D. Photographs of the Site
- E. Architectural Plans & Elevations
- F. Names & mailing addresses of all property owners within 200' of the Property

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