

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Stephen J. Mordfin, AICP, Case Manager  
Joel Lawson, Associate Director Development Review  
**DATE:** September 2, 2014  
**SUBJECT:** BZA Case 18770, 405 8<sup>th</sup> Street, S.E.

---

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following special exception:

- § 733, Fast Food Restaurants in the C-2-A zone.

OP also recommends **approval** of an area variance to the following:

- § 774.1, Rear Yards (15 feet required, none proposed)

Subject to the following conditions:

1. Approval shall be for a period of ten (10) years from the effective date of this order.
2. Hours of operation shall not exceed:
  - a. Sundays through Wednesdays, 10:00 am to 11:00 pm;
  - b. Thursdays, 10:00 am to midnight; and
  - c. Fridays and Saturdays, 10:00 am to 2:00 am.
3. Garbage shall be collected a minimum of six days per week, and recycling a minimum of five days per week, subject to the following:
  - a. Collections shall not occur before 7:00 am;
  - b. Applicant shall provide the garbage and recycling companies with keys to the trash enclosure;
  - c. All receptacles shall be kept within the trash enclosure only, except when being hauled to or from sanitation trucks;
  - d. All receptacles must be secured with lids at all times, including while within the trash enclosure and while being hauled to and from sanitation trucks.
  - e. Garbage and recyclables shall be placed within receptacles within the trash enclosure only;
  - f. Garbage and recycling spills shall be cleaned as they occur.
  - g. Prior to each day's opening applicant shall ensure that no debris was left within the breezeway and that the trash enclosure doors are properly shut and secure.
  - h. The trash enclosure shall be power washed weekly, or more often if necessary, to

prevent food or grease film on the floor of the enclosure, breezeway and receptacles.

- i. Applicant shall allow DPW, DCRA and Zoning Administrator inspectors to access the trash enclosure and breezeway at any time.
4. The applicant shall use vent-less oven systems and install a vent-less hood system over each oven. Minimal general exhaust shall vent through the front of the building.
5. No outdoor seating shall be permitted, including the rear yard and the roof. Employees shall not be permitted to take breaks within the rear yard or the breezeway.
6. The existing HVAC unit at the rear of the property shall be replaced with new models to be relocated to the roof and soundproofed using standards employed by ArtUSA (or similar noise control product business) at 413 8<sup>th</sup> Street, S.E. The same standards shall be used to soundproof the condenser/AC unit to be installed atop the trash enclosure. No additional mechanical equipment shall be installed at the rear of the property.
7. The trash enclosure shall include a trash compactor and cardboard bales be constructed as proposed and incorporate the recommendations contained in the rodentologist report dated May 22, 2014, with the exception of nos. 12, 15 and 16, which are not applicable to this site.
8. Deliveries shall be made through the front only. No deliveries may be made through the breezeway.
9. The applicant shall frequently remove trash and debris from and power-wash the sidewalk to the front of the property.

The applicant has agreed to the above list of conditions.

## II. LOCATION AND SITE DESCRIPTION

Address	405 8 <sup>th</sup> Street, S.E.
Legal Description	Square 902, Lot 825
Ward	6
Lot Characteristics	Level rectangular lot with no alley access
Zoning	CHC/C-2-A -CHC: Capitol Hill Commercial Overlay District -C-2-A: Medium density community business center
Existing Development	Two-story commercial building with no basement
Surrounding Development	The adjacent building to the north was constructed in 1954 with upper level storage space and a full basement. To the west, or to the rear, are two buildings constructed in 2000 with storage areas in rear. The adjacent building to the south was built in 2002 with a rear storage area. The subject building has no storage area, resulting in a practical difficulty to the applicant.

Historic District	Capitol Hill
Adjacent Properties	North: Coffee shop and a real estate office South: One and two-story commercial buildings, including restaurant uses East: Across 8 <sup>th</sup> Street, Commercial buildings West: Rear yards of commercial buildings facing D Street
Surrounding Neighborhood Character	Commercial buildings on 8 <sup>th</sup> Street and D Street, with moderate density residential along the side streets

### III. APPLICATION IN BRIEF

The applicant proposes to open a fast-food carry-out restaurant on the first floor of a two-story commercial structure with no basement. A nail salon would continue to be operated out of the second floor.

The subject property has no alley access. The owner of the subject property owns six lots within the square, all of which, including the subject property, would utilize the existing breezeway on the adjacent lot to the south of the subject property for trash removal to 8<sup>th</sup> Street. HVAC units would provide for fresh air into the kitchen, and a vent-less hood system would be utilized, with all exhaust vented through the front of the building.

A trash enclosure would be constructed within the rear yard, on the west side of the property. All garbage and recycling materials would be stored within this shed, to be constructed and maintained pursuant to the criteria contained in the letter from RMC Pest Management Consulting and dated May 22, 2014. Garbage would be collected six days a week and recycling five days a week. Sanitation workers would access the trash shed via the breezeway on the adjoining property to the south under the same ownership as the subject property, bringing the refuse to their trucks and returning the receptacles to the shed. Existing HVAC units would be replaced and relocated to the roof of the building, with the exception of the unit to be placed atop the trash shed.

Almost thirteen feet in depth, the rear yard is improved as a concrete patio with metal stairs providing access to the second floor. The applicant proposes to remove the stairs and construct a one-story trash shed with a green roof. Entrance to the shed would be from the proposed fast-food restaurant or from the breezeway. Trash would be collected every day except Sunday, and recycling would be collected five days a week.

Customer access and all deliveries would be from 8<sup>th</sup> Street, as there is no alley access. Deliveries would be made during non-peak traffic times. Hours of operation would be Sundays through Wednesdays, 10:00 am to 11:00 pm, Thursdays, 10:00 am to midnight and Fridays and Saturdays, 10:00 am to 2:00 am.

**IV. ZONING REQUIREMENTS and REQUESTED RELIEF**

<b>CHC/C-2-A Zone</b>	<b>Regulation</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Height § 770	50 feet	Approx. 30 ft.	No change	None required
Floor Area Ratio § 1572.3	3.0 max. (non-residential)	1.59	1.80	None required
Lot Occupancy § 772	100% max. (non-residential)	79%	100%	None required
Rear Yard § 774	15-foot min.	12.98 feet	None	Area Variance

**V. OFFICE OF PLANNING ANALYSIS**

**a. Variance Relief from § 774.1, Rear Yards**

**i. Exceptional Situation Resulting in a Practical Difficulty**

Unlike surrounding development, the subject property was not built as a commercial structure. Properties to the north, south and west have been redeveloped with modern structures with either rear or basement facilities to accommodate service commercial refuse needs. The subject property, originally constructed as a 19<sup>th</sup> century residence, was not constructed as a commercial building and has no rear or basement storage facilities. Only within the rear yard is there sufficient space for the applicant to construct a modern storage facility, or trash shed. Without the addition of a trash shed, the applicant would not be able to adequately and properly store garbage and recycling prior to collection by refuse haulers, while protecting nearby properties from odors and rodent infestation.

**ii. No Substantial Detriment to the Public Good**

Rear yard relief would allow the applicant to construct a rodent proof shed, minimizing the impact of the proposed use for odors, rodent infestation and the unsightliness of the storage of garbage generated on-site.

**iii. No Substantial Harm to the Zoning Regulations**

The subject property, including the rear yard, is surrounded on all sides by commercial uses, buffering the rear yard from nearby residential uses. The construction of this shed within the required rear yard would allow the proposed fast food restaurant to operate, while minimizing its impact on the nearby residential community.

**b. Special Exception Relief pursuant to § 733, Fast Food Restaurants in C-2-A Districts**

733.2 *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 subject property is located approximately 275 feet from the nearest residence district.

733.3 *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.*

Not applicable.

733.4 *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.*

No dumpsters would be used. Instead, the applicant proposes to construct a trash enclosure in the rear yard for the storage of garbage and recycling. Exterior doors to the enclosure would face a commercial property to the south and would be kept closed at all times. A variance to rear yard would be required in order to construct this enclosure (see subparagraph a above.)

733.5 The use shall not include a drive-through.

No drive-through is proposed.

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 only customer entrance proposed would be from the front, facing 8<sup>th</sup> Street.

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 use would have no outdoor seating and therefore should not become objectionable due to noise or light. Employees would not be permitted to take breaks within the rear yard, facing the residential row houses to the west, or within the breezeway to minimize noise disturbances. Air conditioning units would be relocated to the roof and soundproofed, and the kitchen would be vented to the front of the building, and not out the back facing the nearby residences. Refuse would be stored within a trash enclosure that would be designed, constructed and maintained to prevent rodent infestation. Hours of operation would be Sundays through Wednesdays, 10:00 am to 11:00 pm, Thursdays, 10:00 am to midnight and Fridays and Saturdays, 10:00 am to 2:00 am.

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.*

No off-street parking is required as the use would occupy an area of less than 3,000 square feet.

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

Most patrons are expected to walk to the site. Deliveries would be through the front of the store, as the site has no alley access. DDOT had no objections to 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.*

As the site has no alley access, trash would be collected utilizing the breezeway and deliveries would be made through the front of the store. Provided the Board grants the area variance requested by the applicant to construct a trash enclosure in the rear yard, the applicant would have adequate trash storage facilities.

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 Office of Planning recommends that the application be approved subject to the conditions contained at the beginning of this report to protect adjacent and nearby properties.

733.12 *An applicant for special exception under this section may request the Board to modify the conditions enumerated in §§ 733.2 through 733.4; provided that the general purposes and intent of this section are complied with.*

No modifications are requested.

**Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?**

The proposed use, a fast food restaurant, is consistent and compatible with the C-2-A, a low to moderate density commercial district, provided the Board grants the requested area requested area variance to the minimum required rear yard.

**Would the proposal appear to tend to affect adversely, the use of neighboring property?**

The proposed fast food restaurant would take place within the building only, as it would have no outdoor seating or other activities. Provided the requested area variance is granted by the Board, the proposed rodent-proof trash shed would allow the use to contain its refuse, shielding it from view from neighboring properties, contain odors within the shed and prevent rodent infestation as a result of the proposed use.

The Historic Preservation Office had no comments on the application.

**VI. COMMENTS OF OTHER DISTRICT AGENCIES**

DOH, in an email dated May 6, 2014, indicated that it had no objection to taking the refuse through the breezeway to the street for collection.

DDOT, in an email May 23, 2014, indicated that it had no objection to the application.

No comments were received from other agencies.

**VII. COMMUNITY COMMENTS**

ANC 6B, at its regularly scheduled meeting of July 8, 2014, voted to support the application.

Attachment: Location Map

