

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18838 of 2737 Sherman Ave NW LLC and Gwendolyn Rucker, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions under § 330.4, to allow a restaurant in the R-4 District at premises 2737 Sherman Avenue, N.W. (Square 2885, Lot 100).

HEARING DATE: October 21, 2014
DECISION DATE: October 21, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

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”) 1B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted a report in support of the application (Exhibits 25 and 35) as well as a Settlement Agreement between the ANC and the Applicant (Exhibit 29). The Office of Planning (“OP”) submitted a report expressing conditional support for the use on the basement and ground floor only, and opposition for the use on the second floor. (Exhibit 34.) However, after testimony at the hearing, OP revised its position and expressed support for the entire application. The District Department of Transportation filed a report expressing no objection to the application. (Exhibit 33.) Forty-nine letters were filed in support of the application. (Exhibits 26, 27, 28 (46 form letters), and 31.)

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 variance from § 330.4. The only parties to the application were the Applicant and the ANC which supported the proposal. 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 ANC and OP reports filed in this case, the Board concludes that in seeking variance relief from § 330.4, the

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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.

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. It is therefore **ORDERED** that this application is hereby **GRANTED, SUBJECT to the APPROVED PLANS, as shown on Exhibit 7 - Architectural Plans, and Exhibit 30 - Existing Second Floor Drawing, and the following CONDITIONS:**

1. Refuse shall be stored and collected within the building. It shall be collected between the hours of 10:00 a.m. and 3:00 p.m. Rodent and pest control measures shall be implemented. No trash shall be stored in public space adjacent to the lot.
2. Loading/deliveries shall take place approximately one time a month during the hours of 9:00 a.m. to 5:00 p.m.
3. The indoor hours of operation shall be limited to 10:00 a.m. to 1:00 a.m. Sunday through Wednesday; Thursday through Saturday 10:00 a.m. to 2:00 a.m.
4. Outdoor café seating hours of operation are limited to 10:00 a.m. to 11:00 p.m. every day, and are ultimately subject to review, approval and permitting through the District's public space process.
5. The Applicant shall move outdoor furniture inside or make it otherwise inaccessible when the establishment is closed.
6. The Applicant shall maintain security cameras and perimeter alarms on the interior of the building and two cameras for the outside patio.
7. The Applicant shall maintain the exterior area immediately in front and behind 2737 Sherman Ave., N.W.
8. The Applicant shall not place signs/posters on more than twenty-five percent of its windows and shall not stack merchandise in front of the windows so as to obstruct visibility into the establishment. Windows shall be cleaned on a regular basis. The Applicant shall maintain the property in reasonable condition that does not detract from the adjacent residential community and shall expeditiously remove or paint over any graffiti on its immediate premises.

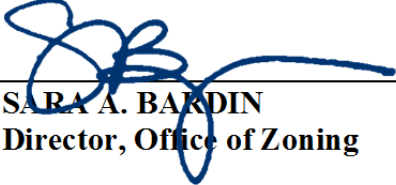
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VOTE: **5-0-0** (Lloyd J. Jordan, Marcie I. Cohen, S. Kathryn Allen, Marnique Y. Heath,
and Jeffrey L. Hinkle to Approve.)

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: October 29, 2014

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

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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.

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.