

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

**Application of Nando's of Woodley Park, LLC
2631 Connecticut Avenue, N.W.**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

Nando's of Woodley Park, LLC ("Nando's" or "Applicant") proposes to establish a fast food establishment/restaurant in an existing building located at 2631 Connecticut Avenue, N.W., Washington, D.C. (Square 2204, Lot 161). The retail space contains approximately 3,442 square feet of rentable area and is one of several ground floor tenant spaces in the building. The property is located in the WP/C-2-B District on the east side of Connecticut Avenue, N.W. between Calvert Street, N.W. and Woodley Road, N.W. It also falls within the boundaries of the Woodley Park Historic District.

II. Relief Requested

The Woodley Park Neighborhood Commercial Overlay ("WP Overlay") permits fast food establishments through special exception relief. Although Nando's is considered a restaurant in virtually every other jurisdiction, because its patrons pay for their meal prior to consuming it, the Zoning Regulations technically deem it a fast food establishment. Consequently, Nando's is required to seek special exception relief under sections 1304.1 and 1307.5 of the Zoning Regulations. Nando's meets the standards for special exception relief as described below.

Nando's also seeks a variance from section 721.3(j), which requires fast food establishments in the C-2-B District to provide certain screening elements if the property abuts an alley that adjoins a residential district. Here, the property abuts a narrow, 15-foot wide alley that serves as the boundary line for the adjacent R-4 District. Because Nando's will be locating in just one of the several retail spaces within a larger commercial office/retail building, there is no opportunity to provide the screening elements. Consequently, variance relief is necessary as described below.

Finally, Nando's seeks a variance from section 1302.5, which requires that restaurants, fast food establishments, and prepared food shops within an NC Overlay District be limited to no more than 25 percent of the linear street frontage, as measured along the lots that face designated roadways. Presently, approximately 33 percent of the lots that face the designated portion of Connecticut Avenue are already comprised of restaurants, fast food establishments, or prepared food shops. Therefore, variance relief is required as described below.

III. Special Exception

Section 1304.1 of the Zoning Regulations provides that the Board of Zoning Adjustment may grant special exception relief from the Neighborhood Commercial (“NC”) Overlay provisions, including the WP Overlay, subject to the following requirements:

A. 1304.1(a): *The excepted use, building, or feature at the size, intensity, and location proposed will substantially advance the stated purposes of the NC Overlay District and the particular NC Overlay District, and will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity.*

1. Consistency with the Purposes of the NC Overlay.

The excepted fast-food establishment use will substantially advance the stated purposes of the NC Overlay District. The NC overlay is designed to encourage a scale of development, a mixture of building uses, and other attributes, such as safe and efficient conditions for pedestrian and vehicular movement, consistent with the Comprehensive Plan. See 11 DCMR § 1300.3(a).

Here, the proposed Nando's eating establishment will occupy ground floor space, in an existing mixed-use commercial building, that has historically been used as an eating establishment. This segment of Woodley Park is a pedestrian-friendly destination spot for neighborhood-serving retail and service uses, include lively restaurants and unenclosed sidewalk cafés. Because Nando's is in every way a restaurant, with the exception of the timing of payment, it will be consistent with the attributes of the commercial segment of the Woodley Park neighborhood. Nando's will not adversely affect the existing safe and efficient conditions for pedestrian and vehicular movement attenuate to this building.

Nando's will encourage the retention of an eating establishment use in space historically occupied by a restaurant, while at the same time establishing a new “fast casual” restaurant-type use that will bring variety to the ground level of an existing commercial use building. See 11 DCMR § 1300.3(b). Nando's will offer a healthy menu of food choices in a hip, casual restaurant atmosphere. It is designed to appeal to the needs of the surrounding area’s residents, workers, and visitors by offering an attractive dining experience that is affordable to moderate income households.

Because Nando's will be locating in an existing tenant space, the provisions of section 1300.3(c) pertaining to limitations on the maximum height of new buildings are not implicated.

2. Consistency with the Purposes of the WP Overlay

The excepted fast-food establishment use will also substantially advance the purposes of the WP Overlay District, which are “to provide for safe and efficient pedestrian movement by

reducing conflicts between pedestrian and vehicular traffic so as to improve access to retail services, the Metrorail station, and other uses in the area.” 11 DCMR § 1307.2.

Other than new signage, Nando's does not propose any changes to the exterior of the existing building. Thus, the existing safe and efficient pedestrian travel paths will continue unchanged, will not create any conflicts between pedestrian and vehicular traffic, and access to retail services, the Metrorail station, and other uses in the area will continue as contemplated by the regulations.

3. *No Adverse Impacts*

The use will likewise not adversely affect neighboring property, nor be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity. As a fast casual restaurant, Nando's is virtually indistinguishable from a restaurant use as defined under the Zoning Regulations, except that patrons pay for the meal before consuming it. Nando's will operate and function like a restaurant, and will produce no more noise, refuse or traffic than other restaurants operating in the same block. Consequently, it will not adversely affect neighboring property, nor be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. Rather, it will benefit the community by contributing the variety of eating establishments in the WP Overlay.

B. *1304.1(b): Exceptional circumstances exist, pertaining to the property itself or to economic or physical conditions in the immediate area, that justify the exception or waiver.*

As will be described in greater detail in the prehearing submission and at the hearing, the continuing effects of the economic recession have had a debilitating effect on small retail and restaurants in the immediate Woodley Park neighborhood and along the commercial corridor of Connecticut Avenue. Small businesses have failed, leaving ground floor space vacant, thus detracting from the quality and character of the streetscape, and the economic vitality of the neighborhood and the city as a whole. Nando's was the only potential tenant with the financial ability to guarantee a multiple year lease, thus help ensuring the economic recovery and stability of the Woodley Park commercial area.

C. *1304.1(c): Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.*

The Applicant will occupy space within an existing building, which has already successfully located and designed vehicular access and egress at the rear alley, just off Woodley Road, to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions.

D. *1304.1(d): The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to*

protect neighboring property and to achieve the purposes of the NC Overlay District and the particular overlay district.

The Nando's space has been attractively designed to be compatible with the existing streetscape and the surrounding Woodley Park Historic District. Further review by the Historic Preservation Review Board of any exterior changes to the existing space will further ensure that the neighboring properties are protected.

IV. Variance Relief

A. *Nature of Relief Sought.*

Nando's seeks an area variance from the provisions of section 721.3(j), as follows:

- *Continuous Brick Wall Along Lot Line (§721.3(j)(2))* – Fast food establishments in the C-2-B District, which are located on a lot that abuts an alley containing a zone district boundary for a residence district, are required to construct and maintain a continuous brick wall at least six feet high and twelve inches thick on the lot along the length of that lot line. Here, the Applicant proposes no screening wall in light of the existing conditions of the building and the narrowness of the alley.
- *Brick Enclosure Wall for Refuse Containers (§721.3(j)(3))*—Fast food establishments in the C-2-B District are also required to house any refuse dumpsters in a three-sided brick enclosure equal to six feet or the height of the dumpster, whichever is greater. The entrance shall not face a residential district.

Nando's also seeks a variance from the provisions of section 1302.5, as follows:

- Restaurants, fast food establishments, and prepared food shops shall be subject to the following limitations:
 - a) These uses shall occupy no more than twenty-five percent (25%) of the linear street frontage within a particular NC Overlay District, as measured along the lots that face designated roadways in the particular district; and
 - b) Except for a fast food restaurant, such uses may be applied to fulfil the requirements of § 1302.4; provided that when such uses are so applied, they shall remain subject to the provisions of paragraph (a) of this submission.

B. *Burden of Proof*

The test for area variance relief is three-part: (i) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (ii) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (iii) that the relief requested can be granted without substantial detriment to the public good or zone plan.

1. Exceptional Condition or Situation

The Applicant will demonstrate that the property is constrained by the configuration of the existing building on the site and the narrowness of the alley abutting the property. These conditions inherent in the property create practical difficulties in complying with the strict requirements of the enclosure wall and linear street frontage requirements, as described below.

2. Resulting Practical Difficulty

a. Enclosure Wall Requirements

Strict adherence to the enclosure wall requirements would require the Applicant to construct a six-foot high wall along the alley for the entire length of the building, even though the Applicant's eating establishment takes up less than one-third of the building's length. The remainder of the building is occupied by other retail, service and restaurant uses. The alley is only 15 feet wide, which makes maneuverability extremely difficult under present conditions. If the Applicant were required to construct a six-foot brick wall along the entire length of the building, it would only exacerbate difficult conditions and create additional problems for the abutting residents who also park their cars off this alley. Presently, the building at 2631-41 Connecticut Ave., N.W., provides a 15-foot rear yard, which effectively widens the alley to 30 feet in places, thus enhancing circulation in the alley. This enhanced circulation feature would be eliminated if the Applicant were required to construct a six-foot tall brick wall. Moreover, the brick wall would also unduly burden other tenants of the building, which are not required to provide such a barrier and which would unnecessarily impede their access to the alley. Construction of a brick enclosure for the refuse dumpsters would also create similar practical difficulties in maneuverability and safe and effective collection of the refuse, given the narrowness of the alley.

b. Linear Street Frontage Requirements

Strict adherence to the linear street frontage requirements would prevent the Applicant from establishing a Nando's eating establishment at the site. Presently, restaurants, fast food establishments, and prepared food shops occupy approximately 33 percent of the linear street frontage of the designated portion of Connecticut Avenue. This percentage represents an excess amount of approximately 171 linear feet (eight percent) of the amount permitted in

section 1302.5. Therefore, it is impossible to locate Nando's at the subject site without a variance from section 1302.5. Market conditions demand tenants with good credit ratings, and eating establishments with a national presence have the requisite financial stability to not only sign leases but proven track records of success. Without such capabilities, the space is at risk of remaining vacant, which negatively affects the streetscape and the viability of other retail spaces.

3. No Harm to Public Good or Zone Plan

The Applicant will demonstrate that the requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. Because the Applicant's business is virtually indistinguishable from a restaurant, except the timing of payment, it does not produce the high volumes of refuse characteristic of typical fast food establishments that use disposable service containers and paper products, and large quantities of cooking oil and grease. Elimination of the barrier walls will enhance circulation and maneuverability in the alley, thus promoting the public good.

In addition, the requested relief can be granted from the linear street frontage requirements because the proposed Nando's will appeal to the needs of the surrounding area's residents, workers, and visitors by offering a unique and attractive dining experience that is affordable to moderate income households. Although 33 percent of Connecticut Avenue's street frontage in this area is already occupied by restaurants, fast food establishments, and prepared food shops, Nando's will provide a healthy menu in a hip, casual restaurant atmosphere. This segment of Woodley Park is already a pedestrian-friendly destination for neighborhood-serving retail and service uses, including lively restaurants and unenclosed sidewalk cafés. The proposed Nando's be a welcome new addition to the community.

Overall, the zone plan will not be compromised, as the proposed project will, for all intents and purposes, serve as a restaurant that will enhance the vitality of the street and provide a variety of healthy food choices at reasonable prices for those who work and live in the neighborhood.

IV. Conclusion

Pursuant to section 3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. Through the Applicant's written statement, and through testimony and evidence presented at the public hearing, the Applicant will further demonstrate how it meets its burden of proof to obtain the Board's approval of the requested relief.