

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Karen Thomas, Case Manager
 Joel Lawson, Associate Director Development Review
DATE: February 17, 2015
SUBJECT: BZA Case 18922, 5427 5th St NW.

I. OFFICE OF PLANNING RECOMMENDATION

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

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

Subject to the following conditions:

1. Trash cans associated with the use shall be stored at the rear of the building at 5427 5th Street N.W., with all refuse collected from the north/south public alley located adjacent to and to the east of the building; and
2. The existing gate between the rear of 5427 5th Street, N.W. and the public alley shall be maintained.

II. LOCATION AND SITE DESCRIPTION

Address	5427 5 th Street NW
Legal Description	Square 3259, Lot 0049
Ward	4/ANC4D
Lot Characteristics	L-shaped, level lot abutting a 15-foot wide rear alley.
Zoning	C-2-A: Low to Moderate density community business center
Existing Development	One-story commercial building
Adjacent Properties	North: Kennedy Street NW South: Row dwellings in the R-4 zone district up to Jefferson Street. East: 15-foot wide alley, across from properties within the C-2-A zone district West: 5 th Street NW, across from properties, also within the C-2-A zone district.
Surrounding Neighborhood Character	Commercial buildings on Kennedy Street, with low to moderate density residential development along the side streets

III. APPLICATION-IN-BRIEF

The applicant proposes to continue the operation of Kenny's Carryout, a fast-food carry-out and delivery, within an existing one-story commercial structure. The applicant is the new lessee of the commercial space within the building. There is no use change and no building construction is proposed.¹

Pedestrian access to the carry-out would be from 5th Street. A rear door, entering onto a small area of the rear yard, is currently used for refuse removal. Refuse would continue to be stored within cans at the rear of the building that abuts a 15-foot wide alley. This area is partially screened from public view by a cinder block wall and is secured by a locked chain-linked gate, which opens into the alley. Deliveries are made to the front of the building, which is a parking area provided for customers of the businesses, which operate within the one-story building.

Daily hours of operation are 11:00 am to 11:00 pm.

IV. ZONING REQUIREMENTS and REQUESTED RELIEF

C-2-A Zone	Regulation	Existing	Proposed	Relief
Use § 733	Fast food per S/E	Fast Food	Fast Food	Special Exception

V. OFFICE OF PLANNING ANALYSIS

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.*

To the north and west are C-2-A zoned lots. A 17.8 foot-wide C-2-A zoned lot separates the subject lot from the R-4 zone district to the south. Pursuant to Section 733.12 of the Zoning Regulations, the applicant requests to modify this condition, as discussed under § 733.12.

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.*

No lot line of the subject property abuts an alley containing the zone district boundary for a residence District.

¹ The applicant submitted a request to DCRA for a certificate of occupancy in August, 2014. The use of the subject location has been a fast-food deli/carryout since 2003, as noted by the former C/O #55140 dated 5/23/2003. No seating is provided for customers.

- 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 trash cans are placed within the rear yard of the property. The majority of this yard is screened from public view by a six-foot high masonry block wall to the east, the brick building to the north and a six-foot high opaque gate to the east, facing the alley and the C-2-A district beyond. Although not a dumpster enclosure, this rear yard is fully secured and the entrance does not face a residence district and the trash cans are not visible to residential properties.

- 733.5 *The use shall not include a drive-through.*

No drive-through currently exists and none 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 is at the front, facing 5th Street NW.

- 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.*

Situated among other neighborhood retail uses along 5th Street and Kennedy Street NW, the carry-out restaurant, should not now become objectionable to neighboring properties because of noise, sounds or lights, as it has existed at this location for over 10 years. OP has not received any indication that there is cause for concern in this regard. A ventilation system is utilized to control odors. The operating hours are similar to the adjacent businesses and hours, which are between 10:00 am and 11:00 pm.

- 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 for this business, which leases space within the larger one-story building, as its area contains less than 3,000 square feet. Parking exists for customers in the front of the building. Existing non-conforming spaces provide parking for customers in the front of the building.

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

All refuse removal currently takes place via the public alley to the east of 5th Street. All loading activities utilize the existing parking area, where smaller delivery trucks provide deliveries to the existing businesses.

- 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.*

Trash is collected from the rear of the building, via the alley. OP has no information that trash removal has been an issue at this location.

- 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.*

OP has no additional recommendation to provide beyond what currently exists for trash pick-up or storage. Trash is picked up by a commercial service 3 times per week.

- 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.*

The south property line is separated from the R-4 zone district boundary to the south by a lot 17.8 feet in width. The applicant therefore requests that the Board modify this condition, to recognize that the fast food operation within the building has existed at this location for more than 12 years. (The site was a former gasoline station.) OP's search of DCRA's online records shows construction permits were issued for the one-story building in 2003, and the certificate of occupancy (provided by the applicant) for the prior owner of the subject fast food business (Kenny's Carryout) was also issued in 2003.

OP has no objection with the approval of this modification in recognition of the long-standing operation of the fast food use at this location. The intent of the regulations would not be impaired, as the use has not been objectionable to the neighborhood nor has it had an adverse impact on the use of neighboring properties.

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

The current and proposed use, a fast food restaurant, is consistent and compatible with the C-2-A low to moderate density commercial district. As the use is also in conformance with the provision of Section 733 of the Zoning Regulations, it is in harmony with the Zoning Regulations and Zoning Maps.

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

The proposal would continue a fast food restaurant in a commercial district that includes other uses similar to the existing neighborhood serving uses. The location is within the C-2-A zone district where these uses are permitted and it is not anticipated to affect adversely, the use of neighboring property.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

Comments from other agencies were not received.

VII. COMMUNITY COMMENTS

ANC 4D met to discuss the application at its regularly scheduled meeting of January 14, 2015. The ANC will vote on its recommendation at its scheduled February 14, 2015 meeting. The ANC's report will be submitted separately to the record.

Attachment: Location Map

LOCATION and ZONING MAP

