

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18922 of Song Quan Liu, Inc., pursuant to 11 DCMR § 3104.1, for a special exception from the fast food establishments requirements under § 733, to operate a fast food restaurant in the C-2-A District, at premises 5427 5th Street, N.W. (Square 3259, Lot 49).

HEARING DATE: February 24, 2015

DECISION DATE: February 24, 2015

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated October 10, 2014, from the Zoning Administrator, which stated that Board of Zoning Adjustment (“Board” or “BZA”) approval is required for a special exception under § 733 to establish the requested use in the C-2-A District. (Exhibit 3.)

The 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”) 4D and to owners of property located within 200 feet of the site.¹ The site of this application is located within the jurisdiction of ANC 4D, which is automatically a party to this application. The ANC did not submit a written report or appear at the hearing to testify. Upon the Board’s questioning, the Applicant testified that he had appeared before the ANC and that the ANC had no objections and was supportive of the application. The Office of Planning testified to that as well.

The Office of Planning (“OP”) submitted a timely report recommending approval of the application with two conditions (Exhibit 24) and testified in support of the application at the

¹ At the hearing, the Board asked the Applicant for a letter of authorization from the property owner, pursuant to § 3113.4 of the Zoning Regulations. The Board ordered that no order would be issued until a letter of authorization was submitted to the record. A letter of authorization was submitted to the record. (Exhibit 28.)

BZA APPLICATION NO. 18922
PAGE NO. 2

hearing.² The District Department of Transportation ("DDOT") submitted a timely report of no objection. (Exhibit 25.)

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception from the fast food restaurants requirements under § 733 to operate a fast food restaurant in the C-2-A District. No parties appeared at the public hearing in opposition to the 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 OP report filed in this case, the Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR § 3104.1 and § 733, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with 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. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED THAT THIS APPLICATION IS HEREBY GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

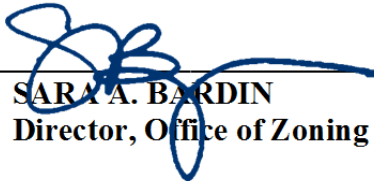
1. The Applicant shall store trash cans associated with the use at the rear of the building at 5427 5th Street N.W and all refuse collection shall take place from the north/south public alley located adjacent to, and to the east of, the building.
2. The Applicant shall maintain the existing gate between the rear of 5427 5th Street, N.W. and the public alley.

VOTE: **3-0-2** (Lloyd J. Jordan, Anthony J. Hood, and Marnique Y. Heath to APPROVE; Jeffrey L. Hinkle, not present or participating; one seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

² OP indicated in its report that the south property line is separated from the R-4 District boundary by a 17.8 foot-wide lot. This is inconsistent with § 733.2, which requires fast food establishments in the C-2-A District to be at least 25 feet from any adjacent Residence district unless separated by a street or alley. Subsection 733.12 permits an Applicant to request that the Board modify the conditions in § 733.2 so long as the general purpose and intent of that section are complied with. OP stated that the Applicant requested such modification in recognition of the fact that this establishment has been operating for more than 12 years. (Exhibit 24.) In granting the requested special exception relief, the Board waived the 25 foot distance requirement of § 733.2, pursuant to § 733.12.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 3, 2015

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 SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE 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.