

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19887 of Marjorie Hutchinson, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from the use provisions of Subtitle U § 301, to permit the conversion of an existing nonconforming non-residential use to a restaurant in the RF-1 Zone at premises 1724 North Capitol Street N.W. (Square 3105, Lot 72).

HEARING DATES: December 19, 2018 and March 6, 2019
DECISION DATES: January 30, 2019 and March 13, 2019

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (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") 5E and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5E, which is automatically a party to this application.

ANC Report

The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 2, 2018, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 30.) The ANC determined that there would be no adverse impact on the neighborhood, that the proposed use was compatible and appropriate, that there would be undue hardship on the owner if the variance were denied, and that there was strong community support for the proposed use. The ANC report further noted the support of the Bloomingdale Civic Association. The ANC Single Member District Commissioner for 5E07, Bertha Holliday, testified on behalf of the ANC at the public hearings on December 19, 2018 and March 6, 2019.

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OP and DDOT Reports

The Office of Planning (“OP”) submitted a timely report recommending approval of the use variance with respect to the first floor of the building, but indicating that OP could not support use variance relief with respect to the second floor. (Exhibit 32.) OP found that the first floor of the building was historically used for commercial purposes, although it was residentially zoned since 1958. Based on a certificate of occupancy showing a “beauty shop” use and exterior photographs of the property showing that a commercial use most recently occupied the first floor, OP determined that the commercial configuration of the first floor was an exceptional situation that would create an undue hardship if the Applicant were required to reconfigure the property to a residential use. OP did not find that there was sufficient evidence regarding the use of the second floor and, therefore, did not find that the same exceptional condition or undue hardship existed. In a supplemental report, OP continued to recommend approval of relief for the first floor, but denial for the second floor; however, OP noted that if the Board finds that the request meets the use variance test, then OP would recommend that conditions be imposed to mitigate any potential impacts on neighboring properties. (Exhibit 60.) OP’s second supplemental report indicated that it generally had no objection to the proposed conditions, but noted that some items would require approvals from separate bodies. (Exhibit 68.)

The Board concurred with OP that the exceptional situation of the property’s commercial configuration creates an undue hardship; however, the Board found sufficient evidence that this argument applies to both floors of the building. The Board determined that the Applicant provided testimony and evidence to support the finding that the second floor was also configured for commercial purposes. Therefore, the Board was not persuaded by OP’s recommendation to deny part of the relief, as it found no justification to distinguish the first and second floors. As the Board found that the application met the standard for a use variance, the Board concurred with OP’s recommendation that conditions be imposed to mitigate potential impacts.

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 31.)

Public Input and Procedural History

At the public hearing on December 19, 2018, the Board heard testimony in support from Santasia Green, Liah Mebrahtu, and Dr. Shaundel Knights. In advance of the public hearing, the Board received 19 letters in support, as well as a petition in support from 140 individuals. (Exhibits 6, 7, and 44-45.) The Board also received seven letters in opposition to the project from neighbors. (Exhibits 34-36, 38, 40-42.)

Councilmember for Ward 5, Kenyan McDuffie, submitted a letter in support of the application, but noted that there were valid concerns raised by neighbors concerning sanitation, parking, traffic, and loitering. (Exhibit 48 and 65.) Councilmember McDuffie suggested that the concerns of neighbors could be managed by the Applicant, and therefore, made his support contingent on

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the Applicant's negotiation and coordination with affected neighbors to address potential impacts.

Based on the concerns raised by neighbors and Councilmember McDuffie, the Board requested at its December 19, 2018 public hearing that the Applicant meet with neighbors affected by the proposal and submit to the record an update on its continued coordination. The Board closed the record, aside from the submission requested, and scheduled its decision for the public meeting of January 30, 2019. (Exhibit 51.)

Before its scheduled decision date, the Board received several requests to reopen the record. First, Sophie Bethune requested that the Board allow the submission of additional information regarding the Applicant's outreach attempts and clarifying that the list of conditions was a tentative compromise agreement, rather than a finalized agreement with neighbors. (Exhibit 56.) Second, Betsy McDaniel requested to submit supplemental information to address issues raised at the hearing, such as feedback from neighbors and the historical use of the building. (Exhibit 57.) Finally, Commissioner Holliday requested to reopen the record to make additions and corrections to a previously submitted summary of coordination between the Applicant and neighbors. (Exhibit 59.)

At the public meeting on January 30, 2019, the Board granted the requests to reopen the record and, further, scheduled a limited scope hearing on March 6, 2019 to further discuss the proposed conditions. (Exhibit 60.) The Board also requested that the Applicant continue to work with neighbors to refine and finalize the proposed conditions in order to mitigate potential impacts of the use, if the relief were ultimately approved.

Prior to the March 6, 2019 hearing, the Board received a survey of neighbor feedback on the proposed conditions, background information on the neighbor survey, and a submission from Commissioner Holliday discussing the meeting between the Applicant and neighbors, as well as a list of proposed conditions of use. (Exhibits 61, 62, and 64-64B.) The Board also received a letter from a neighbor in support of the application and the conditions proposed (Exhibit 63) and three letters raising concerns about the impacts of the application and about the Applicant's inadequate coordination with the neighbors. (Exhibits 66, 67, and 69.) At the public hearing of March 6, 2019, the Board discussed the proposed conditions submitted and heard additional testimony from Commissioner Holliday and testimony in opposition from Betsy McDaniel.

Use Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proof pursuant to Subtitle X § 1002.1 for a use variance from the use provisions of Subtitle U § 301. The only parties to the case were the ANC and the Applicant. 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.

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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 the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, 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.

After determining that the application met the burden of proof for use variance relief, the Board considered whether conditions were needed to mitigate the potential impact of the relief granted. The Board adopted the conditions proposed in Exhibit 64, as modified in order to ensure that the requirements are clear, enforceable, and specifically tailored to mitigate the potential impacts of the use.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29, AND WITH THE FOLLOWING CONDITIONS:**

Noise

1. There shall be no live, recorded, or amplified music in any outdoor space of the property.
2. Sound insulation shall be installed and maintained in any existing or future walls of the second floor terrace facing residences. There shall be planters and plantings installed and maintained to abate noise emanating from the terrace.
3. If a sidewalk café is approved and permitted, there shall be planters and plantings installed and maintained to abate noise emanating from the sidewalk café.

Allowable Hours of Operation

4. The hours of the indoor operation of the restaurant shall be limited to 8 a.m. to midnight.
5. The hours of the outdoor operation of the restaurant shall be limited to 10 a.m. to 10 p.m. Sunday through Thursday, and 11 a.m. to 11:00 p.m. Friday and Saturday.

Parking

6. **Prior to the issuance of a certificate of occupancy for the restaurant use**, the Applicant shall submit to DDOT a request to install bollards and/or apply street marking on the north side corner of Randolph Place, N.W. at North Capitol Street.
7. **Prior to the issuance of a certificate of occupancy for the restaurant use**, the Applicant shall submit to DDOT a request to designate one side of the Unit block of Randolph Place, N.W. as resident parking only from 2 p.m. to midnight on all days of the week.
8. **Prior to the issuance of a certificate of occupancy for the restaurant use**, the Applicant shall submit to DDOT a request to designate a loading zone with limited hours of 8 a.m. to 12 p.m.
9. **Prior to the issuance of a certificate of occupancy for the restaurant use**, the Applicant shall submit to DDOT a request to install a bike rack near the property.

Trash

10. The Applicant shall remove, trash, garbage, and grease from the property at least three times per week. The Applicant shall remove recycling at least once per week. All such removal shall occur during morning hours. The Applicant shall retain a private contractor for all such removal. The Applicant shall ensure that the contractor(s) shall not block traffic or impede traffic flow. All trash, garbage, grease, and recycling shall be stored in an internal location.

Pest and Rodent Control

11. The Applicant shall make best efforts to minimize and eliminate vermin on the property and shall maintain a contract with a pest abatement service provider to do so.

Signage

12. While signage shall be allowed on both Randolph Place and North Capitol Street, there shall be no external, illuminated signage on Randolph Place.

Time Limit on Approval of Outdoor Restaurant Use

13. The restaurant use of the outdoor spaces on the Property, as requested and described by the Applicant in the application and in testimony, shall expire in **FIVE YEARS** from the effective date of the Certificate of Occupancy to allow the Board to review the potential

harm to the public good caused by this aspect of the use variance. An application to extend this time limit shall be in the form of a modification requiring a public hearing.

VOTE: 4-1-0 (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Lesylleé M. White (by absentee vote) to APPROVE; Peter G. May opposed to the motion.)

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. FARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: April 1, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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 SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART

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THERE TO, 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.