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October 4, 2017

Crystal Myers, AICP
Development Review Specialist
DC Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024

Re: BZA Application No. 19600
2330 Wisconsin Avenue NW (Sq. 1300, Lot 0815)

Dear Ms. Myers:

On behalf of the Applicant, Team Washington, Inc. d/b/a Domino's Pizza, please accept this letter as a supplemental statement of support for the above-referenced application before the Board of Zoning Adjustment ("BZA"). In this letter, we supplement our justification for how the property meets the variance standards for an area variance.

The current zoning regulations (at Section 513.1(c) of Chapter 5 of Subtitle U) currently do not allow a special exception for a fast food establishment or food delivery service on the property if any part of the lot on which the use is located shall be within 25 feet of an R, RF, or RA zone, unless separated therefrom by a street or alley. The strict application of the requirement at Section 513.1(c) would result in peculiar and exceptional practical difficulties to the owner of the property. The property, which is 28,051 square feet in total size, is split-zoned R-13 and MU-27. The R-13 portion of the property is occupied with a parking lot for the use of the commercial tenants in The Calvert Center shops on the property along Wisconsin Avenue. The parking lot and the commercial strip on the property have been in existence since 1941.

The owner of the property has previously obtained special exception approvals from the BZA for several decades to operate the accessory parking lot on the property. Most recently, on May 16, 2014, the BZA renewed a special exception (Application No. 18752) to allow the property owner to continue to operate the accessory parking lot on the residential-zoned portion of the property to serve the commercial uses on the property along Wisconsin Avenue. That special exception approval was conditioned on the applicant striping the parking spaces, providing bumper stops to protect adjoining buildings, installing pervious surface material in the

parking lot when the existing surface and subsurface requires replacement, and providing and maintaining landscaping that shields the property from the adjacent residential properties.

Thus, even though the property is split-zoned and includes an R-13 zone on a portion of the property, that R-13 zoned portion is being used exclusively as a commercial parking lot, pursuant to the specific authorization by the BZA. Moreover, the special exception has been supported by the community in the past given that the parking lot provides an area for customers of the commercial stores on the property to park, rather than parking in the nearby neighborhoods. Finally, the nearest actual residence on the adjacent R-3 zoned property is approximately 140 feet from the rear entrance to the space that the new Domino's restaurant would occupy. This is well above the 25-foot threshold that is referenced at Section 513.1(c) of Chapter 5 of Subtitle U.

Given the current zoning and history of the uses on the lot, applying the zoning regulation at Section 513.1(c) of Chapter 5 of Subtitle U would result in peculiar and exceptional practical difficulties given that the R-13 portion of the property is exclusively improved with a parking lot specifically intended for the use of the commercial storefronts, including the space in which the Applicant now seeks to establish a new Domino's restaurant. It should also be noted that similar restaurants, including a Chipotle and Bruegger's Bagels, already operate in other retail locations on the property. Chipotle sought and obtained a special exception from the BZA on December 6, 2010, at which time the same condition at issue (at that time codified at Section 733.2 of the Zoning Regulations of 1958) applied to special exceptions for fast food establishments on the property. The BZA approved the special exception for Chipotle notwithstanding this condition (see attached staff report and BZA order in the Chipotle case). Therefore, the same analysis should be applied in this case given that it involves the same property and the same request for a special exception that the BZA approved for Chipotle in 2010.

Sincerely,

 /s/
Zachary G. Williams

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18752 of Realty Ventures Inc., pursuant to 11 DCMR § 3104.1, for a special exception for an accessory parking lot under § 214, in the NO/C-2-A and NO/R-3 Districts at premises 2330-2338 Wisconsin Avenue, N.W. (Square 1300, Lot 815).¹

HEARING DATE: May 13, 2014

DECISION DATE: May 13, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 3.)

The Board of Zoning Adjustment ("Board" or "BZA") 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") 3B and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3B, which is automatically a party to this application. ANC 3B did not appear at the hearing or submit a written report. However, according to the Office of Planning's report, the ANC, at its regularly scheduled meeting of April 10, 2014, voted to support the application. (Exhibit 27.)

The Office of Planning ("OP") submitted a timely report on May 6, 2014, recommending approval of the application with conditions. (Exhibit 27.) The District Department of Transportation ("DDOT") submitted a letter recommending "no objection". (Exhibit 26.)

The Applicant satisfied the burden of § 3119.2 in its request for special exception relief to allow continued use as an accessory parking lot under §§ 3104.1 and 214. No parties appeared at the

¹ At the hearing both the Applicant and the property owner appeared. The property owner, Isen Brothers LLC, authorized the Applicant to bring the case on the record and the Board gave leave for the property owner to submit a written authorization for the case record.

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public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 214 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 be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS**:

1. Approval shall be for **FIFTEEN (15) YEARS** from the final date of this order.
2. The parking spaces shall be striped.
3. The Applicant shall install and maintain bumper stops to protect all adjoining buildings.
4. The Applicant shall install pervious surface material in the parking lot when the existing surface and subsurface requires replacement.
5. The Applicant shall provide and maintain landscaping as shown on the approved site plan submitted at Exhibit 29 of the record.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this summary order.

VOTE: **4-0-1** (Lloyd L. Jordan, Jeffrey L. Hinkle, Marnique Y. Heath, and Robert E. Miller, to Approve; S. Kathryn Allen, not participating or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:  _____ *for*
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 16, 2014

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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 THERETO, 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.



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: *JF* Jennifer Steingasser, Deputy Director for Development Review & Historical Preservation
DATE: November 9, 2010
SUBJECT: BZA Case 18137 - Request for special exception relief at 2338 Wisconsin Avenue NW

2011 NOV -9 PM 4:39

I. SUMMARY RECOMMENDATION

Although this proposal generally addresses the relevant review criteria for the special exception relief requested under § 733 of the Zoning Regulations, the Office of Planning (OP) is **unable to make a recommendation** at this time pending the receipt of additional information about the proposed relocation of the existing trash dumpster enclosure.

II. AREA AND SITE DESCRIPTION

Address:	2338 Wisconsin Avenue NW
Legal Description:	Square 1300 Lot 0815
Ward:	3B02
Lot Characteristics:	A generally rectangular lot of 0.64 acre (27,930 square feet) with frontages along Wisconsin Avenue and 37 th Street NW.
Existing Development:	2232-2238 Wisconsin Avenue is developed with "The Calvert Center" building and an accessory 29-space parking lot. The building is divided into four lease spaces occupied by the Consulate of El Salvador, Brueggers's Bagel Bakery, a small US Post Office and the subject vacant lease space formerly occupied by a Pizza Hut. Vehicles access the on-site parking area from a driveway along 37 th Street. Curbside parking is also available on Wisconsin Avenue but there is no vehicular access because the Calvert Center building occupies the entire lot frontage.
Zoning:	R-3 and NOPD/C-2-A – accessory parking lots are allowed in both districts, and fast food restaurants are allowed in the latter district, with special exception approval
Historic District:	None
Adjacent Properties:	Properties to the north are developed with a variety of commercial uses; a five-story residential building abuts the property to the south; to the east across Wisconsin Avenue is a Whole Foods Market and the Guy Mason Recreation Center; and to the west across 37 th Street are two-story row dwellings.

BOARD OF ZONING ADJUSTMENT
 District of Columbia

CASE NO. 18137

EXHIBIT NO. 27

Surrounding Neighborhood Character:	A mixture of moderate-density commercial and medium-density residential development (refer to Exhibit 1).
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III. APPLICATION IN BRIEF

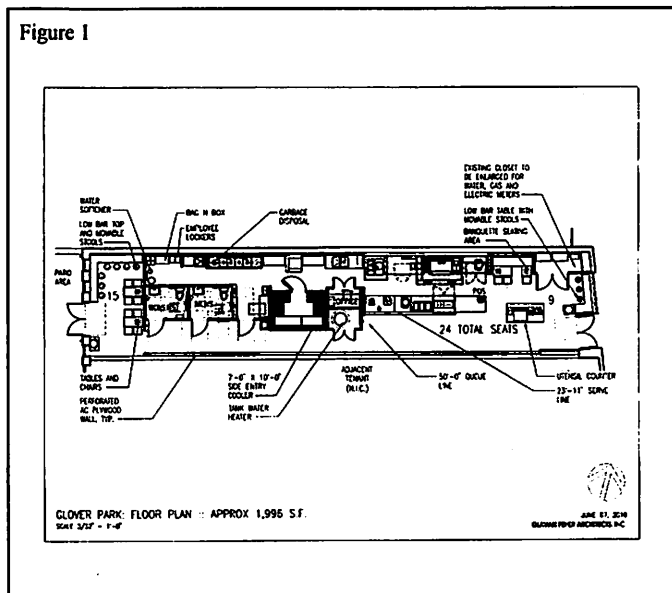
Applicant: Richard S. Isen, property owner

Proposal: To establish a Chipotle Mexican Grill fast food establishment in the subject 1,995 square-foot lease space at 2338 Wisconsin Avenue NW. No expansion of the current building footprint would result under this proposal. Daily hours of operation would be 11:00 AM to 10:00 PM.

An interior layout provided by the applicant indicated that customers would enter from the Wisconsin Street frontage or from the accessory parking lot on the rear of the property. Interior seating would be provided for 24 persons. The applicant indicated that additional seating would be provided on a planned patio area located immediately outside the rear door (refer to Figure 1 below). This arrangement would mirror that behind the neighboring Brueggers’s Bagel Bakery.

The existing parking lot is shared by the building tenants. Two parking spaces in the lot would also be reserved for customers who come to picking up food orders faxed in advance. Other customers, employees and vendors of the proposed use would also be able to utilize this lot and on-street parking along Wisconsin Avenue.

Management also provides a trash collection area that is shared by all tenants. Two existing commercial dumpsters in the parking lot are surrounded by a gated wooden picket fence that is approximately six feet in height. The applicant indicated that management plans to relocate this dumpster enclosure within the parking area.



Relief and Zoning: The Zoning

Administrator referred this request for Board of Zoning Adjustment (BZA) review in a letter dated August 24, 2010, noting that a fast food use in the NOPD/C-2-A district requires special exception approval in accordance with the provisions of § 733.1. The applicant submitted this application for BZA consideration in response.

BZA Application No. 16480 was previously approved to allow continued operation of the existing accessory parking for up to 48 vehicles on the portion of the subject property in the R-3 district. The approval term was for 15 years (until October 6, 2014).

IV. OFFICE OF PLANNING ANALYSIS

Consistency with § 733

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.

The subject property is split-zoned: the western quarter is in a NOPD/C-2-A district and occupied by The Calvert Center; and the eastern three-quarters is occupied by the accessory parking lot in an R-3 district. Although the proposed new use would be within the NOPD/C-2-A district, it would abut the R-3 district.

- 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.*

There is no alley but the existing building does extend the length of the adjacent R-3 district.

- 733.4 *Any refuse dumpster 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.*

Dumpsters in the parking lot are surrounded by a gated wooden fence. The applicant was informed that dumpsters for the proposed use would join the existing trash receptacles within the enclosure. Since the parking lot is entirely within the R-3 district, there does not appear to be a way for the enclosure gate not to face the surrounding residence zone, although it would be beneficial for the gate to face away from the apartment building abutting the property the south. More information was requested about the planned enclosure and dumpster relocation, particularly since there would be two fast food establishments on the property. It was also encouraged that the new enclosure be more consistent with the standards of this provision. However, since this will be a shared facility, the applicant does not control the final orientation and design.

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

No drive-through 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.*

Customers would be able to enter the building from Wisconsin Avenue and the accessory parking lot within the R-3 district.

- 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.*

Neighboring lease space is occupied by other office, retail and service uses. No residential use is adjacent to the subject lease space. The application indicated that the tenant would install additional mechanical equipment on the roof to minimize the grease-laden vapors escaping from the kitchen, and would limit any exterior lighting scheme to the referenced hours of operation.

- 733.8 *The use shall provide sufficient off-street parking, but not less that required by Sec.2101.1 to accommodate the needs of patrons and employees.*

Although some spaces are reserved, the balance of the on-site parking is shared by all tenants per the lease agreement.

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

Customers would arrive on foot, drive and park in the accessory parking lot on-site or park along Wisconsin Avenue. Delivery vehicles would do the same. The use therefore would not contribute to any dangerous traffic conditions.

- 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.*

Servicing the existing parking lot trash collection area does not obstruct public right-of-way.

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.

See below.

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.

OP requested more information about the proposed relocation of a trash enclosure before making a final recommendation. Another question relates to the proposed additional equipment to minimize vapors escaping from the kitchen.

If this rooftop mechanical equipment exceeded a height of four feet about the roof, then the relief may be needed from zoning provisions under §§ 400.7 and 411 that pertain to roof structures. The applicant confirmed that the proposed equipment would not exceed a height of 37 inches above the roof.

Accordingly, OP cannot make a recommendation pending the receipt of information about the trash enclosure relocation.

V. COMMUNITY COMMENTS

Melissa Lane, Chair of Advisory Neighborhood Commission (ANC) 3B, indicated that the ANC voted unanimously to recommend approval of this application at its public meeting on October 14, 2010.

Attachment: Exhibit 1 Aerial with Zoning and Previous Building Façade

Arthur Jackson, Case Manager

JS/afj