

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19600 of Team Washington, Inc. d/b/a Domino's Pizza, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 513.1(c), and pursuant to Subtitle X, Chapter 10, for a variance from the use conditions of Subtitle U § 513.1(c)(1), to establish a fast food and food delivery establishment in the MU-27 and R-13 zones at premises 2330 Wisconsin Avenue N.W. (Square 1300, Lot 815).¹

HEARING DATES: November 8, 2017 and December 20, 2017²

DECISION DATE: January 17, 2018

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 2.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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") 3B and to owners of property located within 200 feet of the site. The site of this application is

¹ This self-certified application for a special exception under Subtitle U § 513.1(c)(1) is to allow a fast food establishment and food delivery service in an existing building, with variances from two conditions of Subtitle U § 513.1(c)(1) relating to distance from an R zone and the proposed garbage enclosure. The property is split zoned MU-27 / R-13, with the building located in the MU portion and the R portion used as a parking lot for the building's retail tenants. The parking lot was approved by the BZA, subject to five conditions, in Case No. 18752. The Board previously approved another fast food establishment in a separate portion of the same building (See, Case Nos. 18137 and 2010).

² The case was administratively postponed from October 25, 2017 to November 8, 2017 (Exhibits 36, 40, and 48) and further postponed to the hearing of December 20, 2017 at the Applicant's request (Exhibit 41). The Board of Zoning Adjustment granted that request. (Exhibit 43.) The case was heard on December 20, 2017 and scheduled for decision on January 17, 2018.

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located within the jurisdiction of ANC 3B, which is automatically a party to this application. The ANC submitted a timely report in support of the application. The ANC report indicated that at a duly noticed and scheduled public meeting on November 2, 2017³, at which a quorum was present, the ANC voted 5-0-0 in support of the application with six conditions. The ANC's report stated no issues or concerns. (Exhibit 49.) The Board adopted the ANC's conditions in this order.

The Office of Planning ("OP") submitted two timely reports in regard to this case. In its second, supplemental report, dated January 12, 2018, OP recommended approval of the application, based on post-hearing information submitted by the Applicant, in the record at Exhibit 61, further justifying their request. (Exhibit 62.) In the initial OP report, OP recommended denial of the application, and recommended adoption of the conditions proposed by the ANC in the event the application was approved. (Exhibit 56.)

The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the grant of the application.⁴ (Exhibit 38.)

The National Capital Planning Commission ("NCPC") submitted a report indicating that the proposal is not inconsistent with the Federal Elements of the Comprehensive Plan. (Exhibit 50.)

Letters and a petition in opposition to the application from neighbors were submitted to the record. (Exhibits 30, 34, 45, 58, 59.) At the December 20, 2017 hearing, Adriana Radulescu and Matthew Wexler testified in opposition to the application.

Variance Relief

As directed by 11 DCMR Subtitle X § 1002.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 1002.1 for an area variance from the use conditions of Subtitle U § 513.1(c)(1), to establish a fast food and food delivery establishment in the MU-27 and R-13 zones. 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.

Based upon the record before the Board, and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a variance from 11 DCMR Subtitle U § 513.1(c)(1), 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

³ The ANC's resolution indicated that the Applicant appeared before the ANC on September 14, 2017 and October 12, 2017 and allowed the comment period to extend to the November 2nd meeting as well.

⁴ In its report, DDOT noted that the Applicant will not be allowed to block travel lanes on Wisconsin Avenue, N.W. as part of their pick-up, drop-off, and delivery operations.

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creates a practical difficulty 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.

Special Exception Relief

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle U § 513.1(c), to establish a fast food and food delivery establishment in the MU-27 and R-13 zones. No parties appeared at the public hearing in opposition to this 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 ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2 and Subtitle U § 513.1(c), 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 Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, 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 AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 3 AND WITH THE FOLLOWING CONDITIONS:**

1. Delivery drivers shall park in the rear parking lot until 10:30 p.m., after which time the drivers will first attempt to park in front of the store, along Wisconsin Avenue, to pick up orders for delivery. If no available parking spaces are available in the front of the store after 10:30 p.m. at night, the delivery drivers may park in the rear parking lot. The Applicant shall ensure that at least one reserved parking space in the parking lot on the property will be available for delivery drivers picking up delivery orders from the store.
2. The Applicant shall train all of its employees regarding proper trash disposal in the dumpster area behind the store so as to minimize odors and prevent rodents in the rear parking lot and trash area on the property. The Applicant shall keep the trash area clean and free from loose debris and trash at all times.

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3. The Applicant shall place large trash cans outside of the store and the Applicant shall clean up trash left by customers three times a day in the vicinity of the store as part of the opening, pre-dinner, and closing checklists.
4. The Applicant shall be limited to one sign comparable to other signage for the Calvert Center along 37th Street.
5. The Applicant shall instruct its delivery truck drivers to turn off the truck engine and refrigeration unit on the delivery truck during store deliveries to significantly minimize the noise level associated with deliveries.
6. The Applicant shall work with the landlord to install a mirror at the driveway entrance to the parking lot on the property from 37th Street.

VOTE: **4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Anthony J. Hood to APPROVE; one Board seat vacant.)

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. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 22, 2018

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

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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 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.