

GOVERNMENT OF THE DISTRICT OF COLUMBIA

**Bill Starrels**

**Commissioner, Advisory Neighborhood Commission 2E05**

**Representing the Georgetown Community**

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**Via Hand-Delivery**

November 12, 2009

Marc D. Loud, Chair  
and Members  
Board of Zoning Adjustment  
One Judiciary Square  
441 Fourth Street, N.W.  
Washington, DC 20001

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 18027

EXHIBIT NO. 16

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**Re: BZA Appeal No. 18027, Philly Pizza & Grill, Inc.  
Filing in Support of the Zoning Administrator's Decision  
and in Opposition to the Appellant's Request for Stay of Enforcement**

Dear Chairman Loud and Members of the Board:

I am the ANC 2E Commissioner for the Single Member District in which the subject of this proceeding, Philly Pizza & Grill, Inc. ("Appellant"), is located.

I strongly support the Zoning Administrator's decision to revoke the Certificate of Occupancy of the Appellant, and I urge the Board of Zoning Adjustment to deny the Appellant's request for a stay of enforcement.

**The Zoning Administrator is correct in determining that Appellant operates a fast food establishment, not a restaurant, in violation of applicable zoning rules.**

The Zoning Administrator's investigation was well-conducted and its conclusions are correct. I have observed on numerous occasions, including quite recently, the same conditions at Appellant's location that have been observed by the Office of Zoning. And in my representative capacity as the ANC commissioner for this area, I have been contacted by neighbors and other observers who have similarly noted the high proportion of carryout and delivery operations compared to any true restaurant activities at Appellant's location.

Appellant's establishment is plainly, even blatantly, operating as a fast food establishment. As the Zoning Administrator's investigation found, its 13 seats are often unused or under-used.

COMMISSIONERS:

Ed Solomon, District 1 Ron Lewis, District 2 Bill Skelsey, District 3 Aaron Golds, District 4  
Bill Starrels, District 5 Tom Birch, District 6 Charles Eason, District 7

Board of Zoning Adjustment  
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Typically, most of the customers who visit the establishment order food by the single pizza-slice and then bring the food outside to consume it. The establishment also offers delivery of pizzas, which, like carryout, is not a restaurant-qualifying activity. The Zoning Administrator has properly determined that there are often crowds of carryout customers with their pizza slices milling around outside the establishment, with others lined up to get their take-out food, and with relatively little use of the establishment's few seats.

The Zoning Administrator has correctly determined that Appellant's establishment does not qualify as a restaurant, the only use permitted by its Certificate of Occupancy ("CofO") and applicable zoning rules for this location, but is instead a fast food establishment. The investigation was appropriate and the conclusion so clearly supported that there is a very high probability the Zoning Administrator's decision to revoke the establishment's CofO will stand on appeal. In these circumstances, both the law and the equities are strongly in favor of allowing the Zoning Administrator's decision to stand during an appeal and denying Appellant's request for a stay of enforcement.

**Irreparable harm would be done to the community if enforcement were stayed of the Zoning Administrator's decision.**

The late-night noise, crowds and disruptive behavior from many of Appellant's fast food carryout customers have been, and continue to be, a serious breach of peace, order and quiet in our community.

Appellant's establishment, which is located on a street where many of the properties are residences, is open until 3:00 a.m. on weekends and 2:00 a.m. weekdays. The establishment has recently published delivery available for the same hours. It is a magnet for young people who have spent the evening in the M Street bars and then come up to the establishment late at night to stop by for carryout pizza. They often mill around with their food outside the establishment and disturb the peace, order and quiet of the neighborhood with loud, disruptive, drunken behavior. This includes a customer urinating on the front door of a home directly across the street from the establishment, that I witnessed. Neighbors have complained frequently about the loss of sleep and disrespect for the neighborhood caused by unruly customers – who are there because of the fast food nature of this establishment.

The Zoning Administrator's decision to revoke the CofO, if allowed to take effect as contemplated, will put a stop to this and restore the peace, order and quiet that the zoning rules intend for this location.

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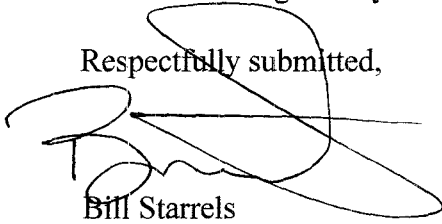
It is not clear to me whether the Board of Zoning Adjustment has jurisdiction to order a stay of enforcement in the circumstances of this case.

If the Board does have jurisdiction, then as I understand it, a stay of enforcement is at least in part an equitable decision involving some deference to the decision of the enforcement authority; consideration of the likelihood of success on the merits; consideration of the harm caused, and to

whom, by staying or not staying enforcement; and a determination of where the public interest lies.

On all of the applicable factors, the Zoning Administrator's enforcement decision should stand and the Appellant's request for a stay of enforcement should be denied. As the Zoning Administrator has determined – both in his decision on the merits and his decision not to grant a stay of enforcement - the Appellant has been flouting the law to the detriment of the community and should not get away with it any longer.<sup>1</sup>

Respectfully submitted,



Bill Starrels  
ANC 2E05 Commissioner

cc by mail: Matthew LeGrant, Zoning Administrator  
Bennett Rushkoff, and Melinda M Bolling, Office of the General Counsel  
John Patrick Brown, Jr. and Kate M. Olsen, Greenstein DeLorme & Luchs, P.C.  
Ron Lewis, Chairperson, ANC 2E

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<sup>1</sup> I request that this letter be made a part of this proceeding and be treated as a timely filing by the ANC commissioner whose single member district includes the subject property. ANC 2E as a whole did not have time to consider this matter at a public hearing because of the timing of the Appellant's request for a stay of enforcement and the hearing date.