

BEFORE THE BOARD OF ZONING ADJUSTMENT OF
THE DISTRICT OF COLUMBIA

2009 NOV 16 PM 4:40

Appeal of Mehmet Kocak and
Philly Pizza & Grill

BZA Appeal N. 18027
Hearing Date: February 9, 2010
ANC 2E

OPPOSITION TO REQUEST FOR STAY OF ENFORCEMENT AND APPELLANT'S
NOTICE OF RELATED APPEAL, AND MOTION TO AMEND PENDING APPEAL TO
INCORPORATE DIRECTLY RELATED NOTICE TO REVOKE BY DCRA

Lynn M. Schubert, resident of 1220 Potomac Street, NW, Washington, DC, respectfully submits this Opposition to the Appellant's Request For Stay Of Enforcement And Appellant's Notice Of Related Appeal, And Motion To Amend Pending Appeal To Incorporate Directly Related Notice To Revoke Certificate of Occupancy No. 0903354 ("Current Certificate of Occupancy") By DCRA. In support of this Opposition, Ms. Schubert states as follows:

1. BACKGROUND

From September of 2008, until today, the appellant, as a renter, has been operating Philly Pizza & Grill in violation of its Certificate of Occupancy ("CofO"), causing a public nuisance and a disturbance to the neighborhood. Both the original Cof O and the revised Cof O issued September 2009 allow this business to operate as "restaurant". Philly Pizza has never, and does not today, operated as a "restaurant" in this location.

2. FACTS

Philly Pizza operates as a take-out and delivery establishment. The overwhelming volume of its business is pizza sold to people who then take the pizza outside and eat it standing in the 1220 block of Potomac Street, a residential area.

The patrons of Philly Pizza do not sit in the limited chairs available inside. Rather, they stand outside eating, drinking, yelling, urinating in public and essentially causing a disturbance until well after 4:00 am, the closing time for Philly Pizza on weekends. (Exhibit A photos)

Philly Pizza is reported on internet blogs as the place to go after the bars close, particularly if you are drunk. You are urged to get there early to get a place to sit on the residential steps on that block to eat your food. If you do not, you are told that the steps will be covered with pizza grease and ranch dressing.

Every weekend the neighborhood becomes essentially unlivable for the residents due to the activities of the patrons of Philly Pizza.

Philly Pizza for a limited period of time put trashcans up and down the public sidewalks in front of the resident's homes.

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18027
EXHIBIT NO. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 18027
EXHIBIT NO. 20

DC Police have a car in front of Philly Pizza for hours on end during the weekends in an effort to enforce the loitering and noise ordinances of the District of Columbia, to no avail.

The activities of Philly Pizza have increased the trash and rodent problems on this block.

3. ARGUMENT

Pursuant to 11 DCMR Section 199, a “restaurant” is a “place of business that does not meet the definition of a “fast food establishment” or a “prepared food shop”, where food, drinks or refreshments are prepared and sold to customers primarily for consumption on the premises. Any facilities for carryout shall be clearly subordinate to the principal use providing prepared food for consumption on the premises.

The trash cans distributed along the entire block by Philly Pizza are indicia that this is a carry out establishment.

The photos included as Exhibit A were taken between 2 and 4 am on Saturday, September 26, 2009, in the 1220 block of Potomac Street, NW, Washington, DC. All of the food shown in the pictures being eaten on the street was take-out from Philly Pizza. These pictures were taken AFTER the revised Cof O was issued.

Even if all 13 chairs of the existing Philly Pizza were occupied that entire time, it is clear that the overwhelming amount of food served was served as take-out. Carryout clearly is not “subordinate” to food consumed on the premises, that is, inside the store front stop.

Philly Pizza is in violation of its Cof O, as found by the Office of Zoning Administrator and should be closed until a determination is made on the appeal of the revocation of the Cof O.

A Stay of Enforcement only is appropriate if the appellant can show (1) likelihood of success on the merits, (2) irreparable harm, (3) no harm to opposing parties and (4) the public interest favors the granting of a stay. Barry v. Washington Post Co., 529 A.2d 319, 320-321 (D.C. 1987).

Philly Pizza has met none of the criteria for a stay. It has not shown no likelihood at all that the appeal will be successful, no irreparable harm that would be caused by the stay, the neighbors will continue to be harmed by this nuisance, eliminating the opportunity for peaceful enjoyment of their property (and sleep), and the public interest in safe, clean neighborhoods is in favor is NOT in favor of the granting of a stay. In fact, there is no public interest in Philly Pizza being in business at all other than the drunks who go there after the bars close and brag online about it being the place to hang out on the street in front of with the take-out food. This does not equal a “public interest”, but rather the opposite.

4. CONCLUSION

Philly Pizza has been operating in violation of its Certificate of Occupancy, causing a disturbance and creating a nuisance to the community. The Office of Zoning Administrator has

investigated the situation thoroughly and its decision to revoke the Certificate should be awarded deference until the hearing of the appeal and in consideration of the appeal. Philly Pizza has shown no grounds for a Stay and the Motion should be denied.

Respectfully submitted,
Lynn M. Schubert
1220 Potomac Street, NW
Washington, DC 20007
202-299-6615

A handwritten signature in black ink, appearing to read "Lynn M. Schubert", written in a cursive style.