

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Georgetown and Hillandale
3265 S Street, NW • Washington, DC 20007
(202) 338-7427 • FAX (202) 338-0279 • anc2e@erols.com

By Fax

January 11, 2010

Marc D. Loud, Chair
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. 39

RECEIVED
D.C. OFFICE OF ZONING
2010 FEB 19 PM 3:58

Re: BZA Appeal # 18027, Philly Pizza & Grill, Inc

Dear Chairman Loud and Members of the Board:

On January 11, 2010, ANC 2E held its regularly scheduled public meeting which was properly noticed and at which six commissioners were present, constituting a quorum. The above-mentioned application was on the agenda, and after Commissioner Starrels presented information further to the information presented at the ANC 2E public meeting held on November 30, 2009, about the Zoning Commissioner's determination to revoke the certificate of occupancy and the subsequent BZA stay of enforcement, comments were offered by ANC 2E Commissioners. The appellant Philly Pizza & Grill Inc. and its representatives were invited to make a presentation and join in the discussion, but the neither the appellant nor its representatives attended the meeting.

After the discussion, ANC 2E approved the following resolution by a vote of 5-1¹:

Resolution of Advisory Neighborhood Commission 2E

WHEREAS, at its regularly scheduled meeting on January 11, 2010 (this "Meeting"), ANC 2E considered Board of Zoning Adjustment ("BZA") Appeal No. 18027 (the "Appeal") of Mehmet Kocak and Philly Pizza and Grill, Inc. ("Philly Pizza" or the "Appellant"), which is an appeal of a decision by the Zoning Administrator to revoke Certificate of Occupancy No. 0800124 and Certificate of Occupancy No. 0903354, both issued for "restaurant" use at 1211 Potomac Street, N.W. in the C-2-A zone district;

WHEREAS, proper notice of the January 11, 2010 Meeting was given;

¹ Commissioner Golds, whose single member district includes mostly Georgetown University students, dissented.

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
District of Columbia
CASE NO. 18027
EXHIBIT NO. 39

WHEREAS, the number of members that constitute a quorum for ANC 2E is four (4), and there were six (6) ANC 2E members present at this Meeting;

WHEREAS, ANC 2E understands that the primary issue in the Appeal is whether or not the Zoning Administrator erred in revoking the Certificates of Occupancy of Philly Pizza pursuant to 12 DCMR 110.5.1, which provides that “[a]ny certificate of occupancy previously issued or issued pursuant to Section 110 shall be revoked by the code official, after notice, if the actual occupancy does not conform with that permitted.”;

WHEREAS, the Appellant has represented in its Pre-hearing Statement filed with the BZA on December 29, 2009 (the “Pre-hearing Statement”) that only 45.41% of its business represents the preparation and sale of food for consumption on the premises, and, conversely, that approximately 54.59% of its business represents the preparation and sale of food for consumption off the premises, which is divided between carryout and delivery use;

WHEREAS, according to reliable information communicated to the full ANC from Bill Starrels, the Single Member District Representative for the subject area, from DCRA, and from neighbors that live adjacent to Philly Pizza, it is unmistakably obvious to ANC 2E that the majority of Philly Pizza’s business is for carryout and delivery, or “off premises” consumption, and it is unmistakably obvious to ANC 2E that the carryout business is not clearly subordinate to a principal restaurant use;

WHEREAS, in the Zoning Regulations, a restaurant is defined as “a place of business...where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises.” [Emphasis added];

WHEREAS, since Philly Pizza does not prepare and sell food primarily for consumption on the premises, it is not a restaurant, as such term is defined in the Zoning Regulations;

WHEREAS, since Philly Pizza’s actual use does not conform with the “restaurant” use permitted in its Certificate of Occupancy, the Zoning Administrator was acting correctly in revoking such Certificate of Occupancy, and Appeal No. 18027 should be denied;

WHEREAS, the ANC Single Member District Representative for the subject area, Bill Starrels, submitted a letter to the Board of Zoning Adjustment dated November 12, 2009, in which he urged the Board of Zoning Adjustment to deny the Appeal, and expressed in clear and comprehensive detail the reasons why the Board should take such action, including the detrimental effect of the Appellant’s unlawful operations on the surrounding neighborhood;

WHEREAS, ANC 2E agrees entirely with the content of the November 12, 2009, letter from Bill Starrels, and wishes to adopt this letter and incorporate it into this Resolution; and

WHEREAS, for various reasons, including the fact that the Appellant has presented new information in its Pre-hearing Statement, and this Meeting is the first scheduled meeting after such filing, the ANC shall request of the BZA that it waive the requirement under Section 3115 of the Zoning Regulations to file this Resolution at least seven (7) days before the hearing, which is scheduled for tomorrow, January 12, 2010;

Therefore, it is

RESOLVED, that ANC 2E recommends to the Board of Zoning Adjustment that Appeal No. 18027 be denied, and that DCRA proceed immediately in revoking the Certificate of Occupancy and ceasing Philly Pizza's unlawful use; and it is

FURTHER RESOLVED, that ANC 2E hereby adopts, in its entirety, Bill Starrels's November 12, 2009 letter (attached as Exhibit A hereto), and incorporates that letter into this Resolution; and it is

FURTHER RESOLVED, that ANC 2E respectfully requests, for the reasons provided herein, that the Board of Zoning Adjustment waive the seven (7) day filing requirement under Section 3115 of the Zoning Regulations and accept this Resolution into the record as if timely filed and afford ANC 2E's position the "great weight" to which it is entitled; and it is

FURTHER RESOLVED, that ANC 2E respectfully requests that the Board of Zoning Adjustment grant the Motion for Leave to Intervene by Ms. Lynn Schubert, Ms. Anne Alonzo and Mr. Alex Mee4ous, who are neighbors living in close proximity to the subject property; and it is

FURTHER RESOLVED, that ANC 2E Commissioners Lewis, Starrels, Solomon, Eason and Birch, or any one or more of them, are authorized to present this Resolution in person at the BZA hearing.

Sincerely,



Ron Lewis
Chair, ANC 2E

Cc by email: Matthew LeGrant, Zoning Administrator
Melinda M. Boling, Esq. and T. Gail Maddox-Levine, Esq. (DCRA)
John Patrick Brown, Jr., Esq. and Kate M. Olson, Esq. (Greenstein DeLorme & Luchs)
Martin P. Sullivan, Esq.

Exhibit A to ANC 2E Resolution

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Bill Starrels

Commissioner, Advisory Neighborhood Commission 2E05

Representing the Georgetown Community

1045 31st Street, N.W. • Washington, DC 20007

(202) 338-1450 or (703) 635-7355 (mobile) • bill.starrels@gmail.com

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

**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. 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.

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.²

Respectfully submitted,

/s/

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

² 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.

3400 Reservoir Road, N.W., Washington, D.C. 20007
Tel. 202/333-4368 or 202/253-5969 (cell)
Fax 202/965-1947
Email: Ron.Lewis@anc.dc.gov

Ron Lewis
ANC 2E 02 Commissioner
Chair, ANC 2E 02

Fax

To: Clifford Moy

From: Ron Lewis

Fax: 202-727-6072

Pages: 7 (including this page)

Phone:

Date: 2/19/2010

Re: Philly Pizza, Appeal # 18027 -

ANC 2E filing of January 11, 2010

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Cliff,

Attached is the ANC 2E resolution in the Philly Pizza appeal adopted at our January 11, 2010 public meeting. Because our January 11 meeting was only one day before the BZA hearing scheduled for January 12, I faxed the attached material to the BZA on the night of January 11.

This is one of three faxes I will send to you today. The second will contain a resolution by ANC 2E, also faxed on January 11, 2010, that authorizes Martin Sullivan to represent ANC 2E in the Philly Pizza appeal. The third is ANC 2E's original resolution in the Philly Pizza appeal, adopted by ANC 2E November 30, 2009 and mailed to the BZA on December 3, 2009.

Best regards,



Ron Lewis
Chair, ANC 2E

2010 FEB 19 PM 3:58

RECEIVED
D.C. OFFICE OF ZONING

3400 Reservoir Road, N.W., Washington, D.C. 20007
Tel. 202/333-4388 or 202/253-5969 (cell)
Fax 202/965-1947
Email: Ron.Lewis@anc.dc.gov

Ron Lewis
ANC 2E 02 Commissioner
Chair, ANC 2E 02

Fax

RECEIVED
D.C. OFFICE OF ZONING
2010 FEB 19 PM 4:07

To: Clifford Moy (fax # 2 of 3)

From: Ron Lewis

Fax: 202-727-6072

Pages: 3 (including this page)

Phone:

Date: 2/19/2010

Re: Philly Pizza, Appeal # 18027 --

2nd ANC 2E filing of January 11,
2010

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Cliff,

Attached is the ANC 2E resolution in the Philly Pizza appeal adopted at our January 11, 2010 public meeting, also faxed on January 11, 2010, that authorizes Martin Sullivan to represent ANC 2E in the Philly Pizza appeal.

Best regards,



Ron Lewis
Chair, ANC 2E

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18027

EXHIBIT NO. 39

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Georgetown and Hillandale

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By Fax

January 11, 2010

Marc D. Loud, Chair

Members

Board of Zoning Adjustment

One Judiciary Square

441 Fourth Street, N.W.

Washington, DC 20001

Re: BZA Appeal # 18027, Philly Pizza & Grill, Inc

Dear Chairman Loud and Members of the Board:

On January 11, 2010, ANC 2E held its regularly scheduled public meeting which was properly noticed and at which six commissioners were present, constituting a quorum. The above-mentioned application was on the agenda, and after discussion, ANC 2E approved the following resolution by a vote of 5-1¹:

Resolution of Advisory Neighborhood Commission 2E

WHEREAS, at its regularly scheduled meeting on January 11, 2010 (this "Meeting"), ANC 2E considered Board of Zoning Adjustment ("BZA") Appeal No. 18027 (the "Appeal") of Mehmet Kocak and Philly Pizza and Grill, Inc. ("Philly Pizza" or the "Appellant"), which is an appeal of a decision by the Zoning Administrator to revoke Certificate of Occupancy No. 0800124 and Certificate of Occupancy No. 0903354, both issued for "restaurant" use at 1211 Potomac Avenue, N.W. in the C-2-A zone district;

WHEREAS, the proper notice of the January 11, 2010 Meeting was given;

WHEREAS, the number of members that constitute a quorum for ANC 2E is four (4), and there were six (6) ANC 2E members present at this Meeting;

¹ Commissioner Golds, whose single member district includes mostly Georgetown University students, dissented.
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

WHEREAS, at the Meeting, immediately prior to considering this Resolution, ANC 2E approved a resolution recommending that the BZA deny the Appeal;

WHEREAS, certain residents of ANC 2E-05, residing on Potomac Street adjacent to Philly Pizza (the "Potomac Street Residents"), are attempting intervene in the Appeal, have hired land use attorney Martin P. Sullivan to represent them in opposing the Appeal, and have authorized Mr. Sullivan to so represent them before the BZA at the hearing on January 12, 2010;

WHEREAS, if the Potomac Street Residents are denied intervenor status, ANC 2E would like to prosecute this Appeal fully, including presenting the Potomac Street Residents and others as witnesses in ANC 2E's case;

WHEREAS, ANC 2E therefore wishes to authorize Mr. Sullivan to represent ANC 2E in the Appeal, in order to provide for the situation in which the Potomac Street Residents are denied intervenor status and ANC 2E is forced to fully prosecute the Appeal on behalf of the Potomac Street Residents as well as on behalf of ANC 2E;

Therefore, it is

RESOLVED, that ANC 2E authorizes Martin P. Sullivan to represent ANC 2E, with the power to bind ANC 2E, at the hearing on Appeal No. 18027 before the Board of Zoning Adjustment on January 12, 2010.

Sincerely,



Ron Lewis
Chair, ANC 2E

Cc by email: Matthew LeGrant, Zoning Administrator
Melinda M. Boling, Esq. and T. Gail Maddox-Levine, Esq. (DCRA)
John Patrick Brown, Jr., Esq. and Kate M. Olson, Esq. (Greenstein DeLorme & Luchs)
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By Fax

January 11, 2010

Marc D. Loud, Chair

Members

Board of Zoning Adjustment

One Judiciary Square

441 Fourth Street, N.W.

Washington, DC 20001

2010 JAN 12 AM 8:31

RECEIVED
U.S. OFFICE OF ZONING

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Sincerely,



Ron Lewis
Chair, ANC 2E

Cc by email: Matthew LeGrant, Zoning Administrator
Melinda M. Boling, Esq. and T. Gail Maddox-Levine, Esq. (DCRA)
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WHEREAS, for various reasons, including the fact that the Appellant has presented new information in its Pre-hearing Statement, and this Meeting is the first scheduled meeting after such filing, the ANC shall request of the BZA that it waive the requirement under Section 3115 of the Zoning Regulations to file this Resolution at least seven (7) days before the hearing, which is scheduled for tomorrow, January 12, 2010;

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FURTHER RESOLVED, that ANC 2E hereby adopts, in its entirety, Bill Starrels's November 12, 2009 letter (attached as Exhibit A hereto), and incorporates that letter into this Resolution; and it is

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FURTHER RESOLVED, that ANC 2E Commissioners Lewis, Starrels, Solomon, Eason and Birch, or any one or more of them, are authorized to present this Resolution in person at the BZA hearing.

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Ron Lewis
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Martin P. Sullivan, Esq.

Exhibit A to ANC 2E Resolution

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Bill Starrels

Commissioner, Advisory Neighborhood Commission 2E05

Representing the Georgetown Community

1045 31st Street, N.W. • Washington, DC 20007

(202) 338-1450 or (703) 635-7355 (mobile) • bill.starrels@gmail.com.

Via Hand-Delivery

November 12, 2009

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

2010 JAN 12 AM 8:32

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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. 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.

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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.²

Respectfully submitted,

/s/

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

² 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.