



921 Pennsylvania Avenue SE
Washington, DC 20003-2141
6B@anc.dc.gov
202-546-8542

April 13, 2016

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Mr. Clifford Moy
Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street NW, Suite 200/210-S
Washington, DC 20001

VIA: Interactive Zoning Information System Filing

RE: BZA #18770B, Modification of BZA #18770A, & pizza, 405 8th Street SE

Dear Mr. Moy:

At its regularly scheduled, properly noticed meeting on April 12, 2016, with a quorum of 6 Commissioners present, Advisory Neighborhood Commission 6B (ANC 6B) voted 8-1-0 in support of the modifications proposed by the Applicant, & pizza, to BZA Order No. 18770A (the "September 2014 Order"). ANC 6B's support is contingent upon the applicant submitting and the BZA incorporating into the September 2014 Order 1) the modifications to the conditions of the Order agreed to by the applicant in its submission to BZA of April 13, 2016, as follows:

- Paragraph 1 (revised). "The exception shall be for a period of five (5) years from the original September 19, 2014 date of the unmodified Order;"
- Paragraph 3 (new 'i'). "The trash enclosure shall be used only for the storage of trash and recycling;"
- Paragraph 4 (revised) "As specified in Exhibits 7A-C, the applicant shall use a ventless oven system, install either a hood or exhaust grill over each oven stack, and remove all cooking exhaust through the specified ductwork and Pollution Control Unit (PCU) described in Exhibit 12. The PCU will exhaust through the face of the building as specified in Exhibits 7A-C. The applicant shall maintain the system in good working order, and shall enter into a maintenance contract with a service provider to, among other things, regularly clean the ductwork and PCU and provide new or clean filters in order to ensure effective elimination of odors from the vented cooking exhaust for the duration of the time that the applicant operates at 405 7th S., SE."

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- Paragraph 7 (revised) “As specified in Exhibits 7A-C: the HVAC unit at the rear of the property shall be replaced with a new HVAC unit located atop the trash enclosure; a mini split to cool the trash enclosure will also be installed atop the trash enclosure; and a cooler condenser shall be installed atop the dog leg roof. These mechanicals will be soundproofed as specified in Exhibits 7A-C to meet the standards employed by ArtUSA (or similar noise control product business) at 413 8th Street, S.E. No additional mechanical equipment shall be installed on either roof or at the rear of the property.”
- Paragraph 11 (new). “The applicant shall appoint a designated individual member of its organization to ensure compliance with the provisions of this order.”

and; 2) the complete set of building plans identified as Exhibit 7A through C in the BZA docket.

The Commission reiterates that ANC 6B only supports modification of the September 2014 Order if that modification includes the conditions listed above and the plans at Exhibit 7A-C. If any of the conditions above or Exhibit 7A-C are not agreed to by the applicant or not incorporated into the modified Order, ANC 6B would oppose the requested modifications to BZA Order No. 18770A.

The Applicant’s proposed modifications are being supported by the Commission and endorsed by surrounding neighbors despite the fact that &pizza in concert with the owner of 405 8th Street SE-- Capitol Hill Investors, LLC (CHI)--conducted two and a half months of construction without construction permits and pursuant to unapproved plans that contradicted the most fundamental requirements upon which the ANC’s support of the 2014 variance request and fast food exception was premised and which &pizza was ordered to comply with by the BZA in its September 2014 Order. Contrary to the September 2014 Order, the unpermitted plans that &pizza and CHI used for construction:

1. Placed a large walk-in cooler for food and beer in the extension that &pizza and CHI agreed and the BZA ordered be used exclusively for trash and recycling as depicted in BZA 18770A, Exhibit 40C;
2. Substituted a venting hood system (without a Pollution Control Unit) for the ventless system that &pizza agreed and the BZA ordered be used; and
3. Located the HVAC compressor and other mechanicals on the roof of a one-story extension, as opposed to the higher main roof of the building where &pizza had agreed and the BZA had ordered them to be placed.

The plans also lacked a variety of the rodent proofing measures (Exhibit 40D) that &pizza had agreed to and the BZA had ordered.

The applicant’s illegal construction activities based on plans that contradicted the requirements of BZA Order 18770A were beyond disappointing given the extensive and time consuming negotiations (involving six ANC meetings and numerous meetings between Applicant and neighbors) required to reach agreement on conditions for supporting the 2014 variance and exception requests. (An overview of the serious public health and quality of life issues that the conditions were intended to mitigate is contained in the preamble of the September 2014 Order and the ANC 6B May 19, 2014, letter (Exhibit 26) cited in the preamble of the Order. As noted in the preamble, before the mitigating

ANC 6B Letter to BZA

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conditions were negotiated and agreed to, nearly 100 neighbors signed a petition opposing the project.)

Recognizing their mistake, &pizza has worked diligently and in good faith over the past 6 months with a small group of neighbors, former ANC Commissioners, and engineers and other experts to determine how what they have constructed can be modified to bring the project in line with the spirit of what was required by the September 2014 BZA Order. The result is the proposed modification as documented in the requested conditions and plans (revision 8). Given the genuine cooperation demonstrated by &pizza (and in light of the support they have garnered from the neighbors over the past six months of interaction), ANC 6B has agreed to support the proposed modification to BZA Order No. 18770A and recommends that the BZA Board approve the proposed modifications as outlined above.

ANC 6B takes no position on whether the proposed modification can be treated as "minor" under the controlling regulations.

Enclosed is a completed Form 129. Please contact Commissioner Nick Burger, ANC 6B's Planning and Zoning Committee Chair, at 202-246-9928 or nick6b06@anc6b.org if you have questions or need further information. Thank you

Sincerely,

A handwritten signature in black ink, appearing to read 'Kirsten Oldenburg', written in a cursive style.

Kirsten Oldenburg
Chair



BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 129 – ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

Before completing this form, please review the instructions on the reverse side.

Pursuant to §§ 3012.5 and 3115.1 of Title 11 DCMR Zoning Regulations, the written report of the Advisory Neighborhood Commission (ANC) shall contain the following information:

IDENTIFICATION OF APPEAL, PETITION, OR APPLICATION:

Case No.:	18770B	Case Name:	&pizza
Address or Square/Lot(s) of Property:	405 8th Street SE		
Relief Requested:	modification of BZA #18770A Order of September 2014		

ANC MEETING INFORMATION

Date of ANC Public Meeting:	0	4	/	1	2	/	1	6	Was proper notice given?:	Yes	☒	No	☐
Description of how notice was given:	Postings on the ANC website on March 25 and April 1, 2016.												

Number of members that constitutes a quorum:	5	Number of members present at the meeting:	9
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MATERIAL SUBSTANCE

The issues and concerns of the ANC about the appeal, petition, or application as related to the standards of the Zoning Regulations against which the appeal, petition, or application must be judged (*a separate sheet of paper may be used*):

See details in attached letter

The recommendation, if any, of the ANC as to the disposition of the appeal, petition, or application (*a separate sheet of paper may be used*):

ANC recommendation is to support the modification conditioned on inclusion in the modified Order of a list of revised conditions as outlined in the letter.

AUTHORIZATION

ANC	6	B	Recorded vote on the motion to adopt the report (i.e. 4-1-1):	8-1-0
Name of the person authorized by the ANC to present the report:			Chair	
Name of the Chairperson or Vice-Chairperson authorized to sign the report:			Kirsten Oldenburg	
Signature of Chairperson/ Vice-Chairperson:				Date: 4-13-16

ANY APPLICATION THAT IS FOUND TO BE INCOMPLETE MAY NOT BE ACCORDED "GREAT WEIGHT" PURSUANT TO
11 DCMR §§ 3012 AND 3115.