

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Crystal Myers, Case Manager  
*JLS*  
 Jennifer Steingasser, Deputy Director, Development Review & Historic Preservation

**DATE:** December 8, 2017

**SUBJECT:** BZA #19600 – 2330 Wisconsin Avenue, NW for a fast food and food delivery establishment.

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **Denial** of the following:

- U § 513.1(c) Special exception to permit a fast food and food delivery establishment
- Special exception includes a variance from 513.1(c)(1)

Should the Board conclude that the applicant has made the case for a variance and approve the application, OP recommends including the ANC conditions.

The site for which the relief is requested is subject to the requirements of Subtitle G § 1200.3, which states that “*Requested relief that does not comply with the applicable conditions or limitations for a special exception as set out in this subtitle shall be processed as a variance.*” As such, it may be more appropriate for the proposal to be viewed as a variance to allow the fast food and food delivery establishment, since it would not meet all of the relevant conditions. However, OP has analyzed the proposal as submitted in the application.

**II. LOCATION AND SITE DESCRIPTION**

Address	2330 Wisconsin Avenue, NW
Applicant:	Mark Viani and Zachary Williams on behalf of Team Washington, Inc. d/b/a Domino’s Pizza
Legal Description	Square 1300, Lot 815
Ward / ANC	Ward 3; ANC 3B
Zone	MU-27/R-13
Historic District or Resource	N/A
Lot Characteristics	28,051 sq. ft. trapezoid shaped lot. The lot is located between Wisconsin Avenue, NW to the east and 37 <sup>th</sup> ST, NW to the west.
Existing Development	A commercial building with four retail spaces known as, “The Calvert Center”. A 29-space accessory parking lot is in the rear.
Adjacent Properties	Multifamily building to the south Mixed use building to the north

Surrounding Neighborhood Character	The surrounding neighborhood is mixed with commercial establishments along Wisconsin Ave NW and the rest is residential. The U.S. Naval Observatory is about ¼ mile east of the site.
Proposed Development	The proposal is to locate a fast food and delivery use in an existing commercial building

### III. PROPOSAL and SITE DESCRIPTION

The Applicant is proposing to locate a fast food and delivery establishment, Domino’s Pizza, in an existing commercial building, known as The Calvert Center. The site is split zoned MU-27/R-13. The existing building is in the MU-27 portion of the site and its parking lot is in the R-13 portion of the site. The building has four leasable spaces, three of which are occupied with two fast food establishments and the U.S. Postal Service. The proposed fast food and delivery establishment would be in the fourth space at the corner of the building, which is immediately adjacent to a multifamily residential building on Wisconsin Avenue, NW. The proposal includes five parking spaces and the Applicant intends to have 3-4 delivery vehicles. The hours of operation would be from 10:00am to 2:00am Sunday through Thursday and 10:00am to 3:00am Friday through Saturday.

### IV. ANALYSIS

#### Variance Relief from Special Exception Requirement U § 513.1(c) (1)

(c) *Fast food establishments or food delivery service eating and drinking establishments in the MU-4, MU-17, MU-25, and MU-27, subject to the following conditions:*

(1) *No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a R, RF, or a RA zone, unless separated therefrom by a street or alley;*

The site is split zoned including R-13 and directly adjacent to R-3 zoned properties. It is located between R-3 zoned properties to the north and south. Therefore, the Applicant is requesting variance relief from this requirement.

#### ***Exceptional Situation Resulting in a Practical Difficulty***

The Applicant argues that the history of the site, the owner’s inability to lease the site, the previous approvals on the site, and the location of the proposed use on the site are exceptional situations. According to the Applicant, these situations would make it difficult for the property owner to comply with the Zoning Regulations. OP disagrees with this argument. While there may be exceptional situations on the site, they do not result in practical difficulties to the Applicant if the zoning regulations were enforced.

#### Zoning and History

The Applicant points out that the site is exceptional because it is split zoned between MU-27 and R-13 and it has a history of being used as a commercial site.

#### OP Analysis

The site is not the only split zoned site in the square but it is the only one with R-13 and MU-27 and it is the largest. The others are split zoned with R-3/MU-27. However, the Applicant has not provided an argument as to how this results in a practical difficulty to the property owner to providing a conforming use.

#### Inability to Lease the Site

The Applicant submitted a letter from the property owner stating that the proposed space is difficult to lease and has been vacant for one year (Exhibit 53).

#### OP Analysis

OP does not believe that one year is a sufficient amount of time to determine that the space is unable to be leased by a use that meets the MU-4 requirements.

#### Approved Accessory Parking Lot

The parking lot on the rear portion of this site is permitted through special exception approval. The Applicant states that the parking lot was approved to support commercial use so not permitting a fast food and delivery establishment on this site would be a practical difficulty to the property owner.

#### OP Analysis

Use of the parking lot should not be considered a practical difficulty to the property owner because even if the proposed fast food and delivery special exception use is not granted, the parking lot could still be used for any commercial use permitted in the zone.

#### Other Approved Fast Food Establishments

Two other fast food establishments exist on the site. One is a Bruegger's Bagels and the other is a Chipotle restaurant. The Applicant points out that the Chipotle restaurant received special exception approval for a fast food and delivery use from the BZA in 2010 (Case 18137). The previous zoning regulations were in effect at the time and no variance relief was requested in that case.

#### OP Analysis

Not granting an additional fast food establishment on a site that has two previously approved fast food establishments is not a practical difficulty to the property owner. While a similar approval was granted for one of the other fast food establishments, the review was done seven years ago and did not include a review for variance relief, as is required in this case.

#### Use Location

The Applicant argues that though the site is less than 25 ft. away from the adjacent R-3 zoned lot, the location of the proposed use in the existing building is approximately 140 ft. away from the nearest residence in the adjacent R-3 zoned lot.

#### OP Analysis

This is not a relevant measure for the distance between the R-3 zone and the fast food and delivery, and would be contrary to the wording and intent of the regulations.

***No Substantial Detriment to the Public Good***

The use would be located in an existing commercial building and require no outside alterations. The existing building contains two other fast food establishments and along Wisconsin Avenue, NW there are many other restaurants nearby. The neighborhood in the rear of the property is residential but the site's commercial parking lot has been in existence for many years.

***No Substantial Harm to the Zoning Regulations***

Fast food and delivery establishments are only permitted in the MU-27 zones as special exception uses that comply with a series of standards, and the Applicant has not provided a compelling argument to support variance relief from these standards.

**Fast Food and Delivery Establishments Special Exception Criteria U § 513.1(c)(2-8)**

- (2) *If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot;*

The site does not abut an alley but it is adjacent to the R-3 zone district on the northern, southern, and western sides. A concrete wall and a wooden fence separate the site from the R-3 zoned properties to the north and the south. 37<sup>th</sup> Street separates the site from the properties to the west.

- (3) *Any refuse dumpster shall be housed in a three (3)- sided brick enclosure equal in height to the dumpster or six feet (6 ft.) whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a residential zone;*

The proposed fast food and delivery establishment would use the site's existing refuse dumpster. The dumpster is enclosed with a wooden fence.

- (4) *The use shall no include a drive-through;*

The proposal would not include a drive-through.

- (5) *The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions.*

The proposed use would be in an existing commercial building that contains two other eating and drinking establishments. The proposed space is at the end of the building and adjacent to a multifamily building to the north. In the rear, single family residential properties are also adjacent to the parking lot. The Applicant does not expect the odors from the proposed fast food establishment to be an issue, as there would be an exhaust system installed that removes the odor from the exhaust. No significant levels of noise should be generated from the proposed fast food and delivery establishment. The Applicant does not expect large crowds outside of the establishment. Lighting for the establishment would be minimal and there is existing lighting on the site. The Applicant is only planning an interior lit sign facing Wisconsin Avenue, NW and a small security light in the rear facing the parking lot.

- (6) *The use shall provide sufficient off-street parking, but not less than that required by Subtitle C, Chapter 7 to accommodate the needs of patrons and employees;*

The proposed fast food and delivery use would have sufficient off-street parking.

According to Subtitle C, Chapter 7 only eating and drinking establishment over 3,000 sq. ft are required to provide off-street parking. The proposed use would occupy 2,000 sq. ft. so off-street parking would not be required. However, five spaces would be reserved for the proposed use, which would include 3-4 delivery vehicles.

- (7) *The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and*

The proposed use should not create dangerous or objectionable traffic conditions. It would be located in an existing commercial building. The Applicant expects that most customers would walk to the establishment, park on the street, or park in the rear parking lot.

- (8) *The Board of Adjustment may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property;*

If the BZA approves the variance that would allow the use on this site, OP recommends that any new lighting is low level and downward, as discussed below.

#### **Naval Observatory Area Special Exception Criteria G §1202.1(a)**

*The Board of Zoning Adjustment shall consider whether the proposed development is compatible with the:*

- (1) *Present and proposed development within and adjacent to the MU-27 zone;*

The proposed fast food and delivery establishment would not appear to be incompatible with the adjacent MU-27 developments. It is next to a multi-family building to the south and other commercial establishments in the area.

- (2) *Goals, objectives, and policies pertaining to Federal facilities, as found in the Comprehensive Plan and the Master Plans for the Federal facilities within the MU-27 Zone; and*

The proposed fast food and delivery establishment should not have an impact on the Federal facilities within the MU-27 zone.

- (3) *Role, mission, and functions of the Federal facilities within the MU-27 zone, considering the effect that the proposed development would have on such facilities*

The proposed fast food and delivery establishment should not impact any federal facilities in the MU-27 zone, provided that any new lighting is designed to be as low intensity as possible and downward pointing to minimize ambient light spill.

### V. COMMENTS OF OTHER DISTRICT AGENCIES

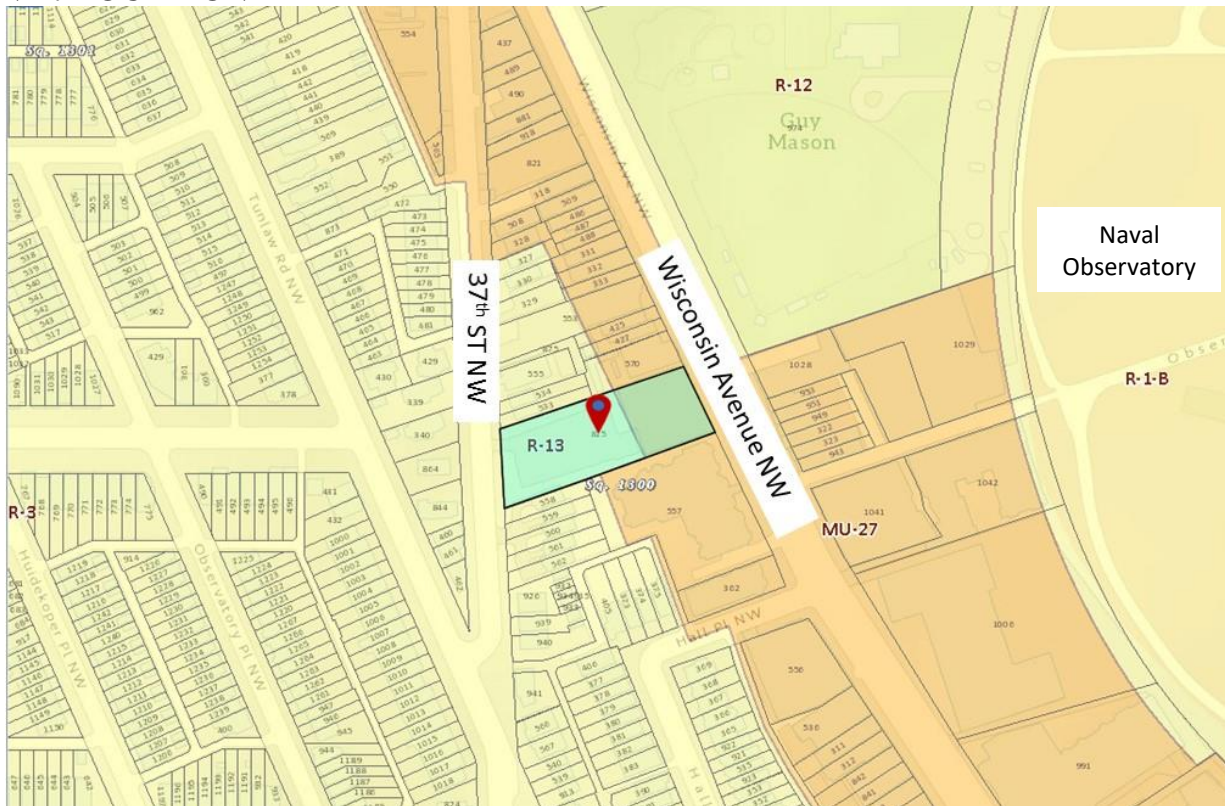
As of the writing of this report no other agency comments have been submitted.

### VI. COMMUNITY COMMENTS

As of the writing of this report, a petition in opposition was submitted with 122 signatures from residents of the surrounding Glover Park community. It includes signatures from some of the adjacent neighbors. Letters in opposition have also been submitted. One letter is from the owner of one of the single-family properties at the rear of the site (Exhibit 30). The letter expresses concern over trash management on the site and about additional traffic and parking lot circulation problems that could be caused by having delivery vehicles. Another letter notes concern over the possibility that the proposed fast food establishment would take away business from other restaurants in the area that serve similar types of food (Exhibit 34).

The ANC submitted a resolution in support of the proposed use along with a list of conditions, which relate mostly to parking lot and trash management on the site.

### VII. LOCATION MAP



2330 Wisconsin Ave, NW Location Map