

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY
SEPTEMBER 22, 2009

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The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE DETTMAN, Vice Chairman
MERIDITH MOLDENHAUER, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Public Meeting held on September 22, 2009.

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

P R O C E E D I N G S

9:54 A.M.

CHAIR LOUD: Good morning. This meeting will please come to order.

Ladies and gentlemen, this is the September 22nd Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson. And joining me today are Vice Chair Dettman to my right; Meridith Moldenhauer to my left, Board Member; and then to her left, Mr. Clifford Moy, Secretary of the BZA; Ms. Sherry Glazer, Office of the Attorney General; and on my far left, Ms. Beverley Bailey, Zoning Specialist in the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door.

We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please be advised that this

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1 proceeding is being recorded by a court
2 reporter and is also webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room. Please turn off all beepers and
6 cell phones.

7 Does the staff have any preliminary
8 matters?

9 MR. MOY: Yes, we do, Mr. Chairman,
10 but we can handle it since we have the one
11 case for decision making this morning.

12 CHAIR LOUD: Thank you, sir. Then
13 why don't we call that one case and we can
14 proceed with this morning's agenda.

15 MR. MOY: Yes, good morning, Mr.
16 Chairman, Members of the Board. That case is
17 Application No. 17953 of Capitol Pizza Mia,
18 pursuant to 11 DCMR 3104.1, for a special
19 exception for a fast food restaurant under
20 section 733, in the C-2-A District. This is
21 at premises 2005 18th Street, N.W., Square
22 2557, Lot 13.

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1 As the Board will recall, on
2 September 8, 2009, the Board completed public
3 testimony, closed the record, and scheduled
4 its decision on September 22nd, 2009. The
5 Board requested additional information to
6 supplement the record from the Applicant and
7 the Office of Planning. This is additional
8 documentation.

9 There are two sets of filings that
10 have been entered into your case folders, Mr.
11 Chairman. The first is a filing from the
12 Office of Planning that is identified in the
13 case photos as Exhibit 31. The second set of
14 filings is from the Applicant which was
15 submitted into the record yesterday, September
16 21st, and so it was untimely, since the
17 documentation had a deadline of September
18 14th. But nonetheless, these filings are
19 identified as Exhibits 32, 33, 34, and 35.

20 The Board is back on the merits of
21 the requested special exception relief for a
22 fast food restaurant under Section 733 and

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1 that completes the staff's briefing, Mr.
2 Chairman.

3 CHAIR LOUD: Thank you, Mr. Moy.
4 It's my understanding that these exhibits were
5 exhibits that we requested from the Applicant?

6 MR. MOY: Yes, sir.

7 CHAIR LOUD: Okay. And based on
8 the fact that we've requested them, we thought
9 they bore some significance to our being able
10 to deliberate on the case. I don't see any
11 reason why we should not accept them in our
12 record and looking at Board Members, it
13 appears from their heads shaking that there
14 are no concerns with respect to allowing these
15 in.

16 Okay, why don't we allow these
17 exhibits into our record. I think that we are
18 ready to deliberate on the case this morning.

19 And Mr. Dettman is going to lead us off.

20 VICE CHAIR DETTMAN: Thank you, Mr.
21 Chairman, as Mr. Moy stated, we did receive
22 the two filings that the Board requested at

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1 the close of the hearing. We requested a
2 Letter of Authorization from the owner
3 stipulating that Capitol Pizza Mia could bring
4 the application to the Board and that is our
5 Exhibit 34. We also asked for a copy of the
6 deed to demonstrate ownership of the property
7 by the Welch family. We received two copies.

8 In fact, one was from the Office of Planning,
9 Exhibit 31 and one is Exhibit 35, received
10 from the Applicant.

11 I think the case is relatively
12 straight forward, Mr. Chairman. I think based
13 on the testimony that was provided by the
14 Applicant, as well as OP, and the filings that
15 are in the record, I think the provisions of
16 773 are met. The subject property is not
17 close to a residential district. It's more
18 than 25 feet from the nearest residential
19 district. It doesn't have a drive through.
20 It doesn't have a entrance at either the rear
21 or the side yards. There's no -- according to
22 OP's report, and the testimony that was

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1 provided, there's no history of problems of
2 the use of this subject property as an eating
3 establishment with respect to noise, sound,
4 odors, lights.

5 There was one letter in opposition,
6 expressing concern regarding late-night
7 patrons. However, considering the other uses
8 that are around the subject property and the
9 testimony that was provided, I don't see how
10 that really is an issue that would impact the
11 approval of this application.

12 There's no parking that's required.
13 I think that even in the Letter of
14 Opposition, there was a note about controlling
15 the hours of operation, so I think -- again, I
16 think the provisions of 733 are met. I'm
17 inclined to recommend approval of the
18 application, Mr. Chairman, with the right
19 conditions of approval.

20 CHAIR LOUD: Thank you, Mr.
21 Dettman. That was an excellent recap of the
22 standard and the evidence.

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1 Did you want to go into any of
2 those conditions at this point?

3 VICE CHAIR DETTMAN: Sure. The
4 first one is the hours of operation. Again,
5 that one letter that we did receive and the OP
6 report suggested that the hours of operation
7 be included as a condition.

8 The Applicant had testified to
9 hours of operation, Sunday through Thursday,
10 11 a.m. to 1 a.m. and Friday and Saturday, 11
11 to 3:30 a.m. I don't see a reason why we
12 don't include those hours of operation as a
13 condition. I don't really see a need. Again,
14 given the other establishments that are in the
15 immediate area, some of the bars and other
16 restaurants, I think that those are hours of
17 operation that are appropriate for this
18 location.

19 And then some of the other
20 conditions, I'm not proposing the exact
21 wording here, but something to do with the
22 existing trash area and that it be cleaned at

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1 least twice per week and perhaps that the
2 refuse containers be closed and secured at all
3 times, that trash should be picked up at least
4 four times a week. And I get that number from
5 actual testimony provided by the Applicant. I
6 believe the Applicant said that the Applicant
7 shares a trash removal company with some of
8 the other establishments in the area and they
9 have their trash picked up four times a week.

10 And two other ones, maybe the
11 Applicant shall maintain the public space in
12 front of the subject property in a neat and
13 orderly fashion and -- actually, that's it,
14 Mr. Chairman.

15 CHAIR LOUD: Again, thank you, Mr.
16 Dettman. That was an excellent presentation
17 of the case and the evidence.

18 Ms. Moldenhauer, did you have any
19 comments?

20 MEMBER MOLDENHAUER: I believe that
21 Mr. Dettman summarized all the facts. I agree
22 with the conditions that he's presented. And

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1 I believe I'm in favor of moving forward.

2 CHAIR LOUD: Excellent. Mr.
3 Dettman, just one quick question on the
4 maintaining of the public space, specifically,
5 you're talking about the sidewalks and the
6 curbs and that kind of thing, but not
7 necessarily the roadway?

8 VICE CHAIR DETTMAN: Just the
9 sidewalk in the area. I think the Applicant
10 had said that occasionally patrons come in and
11 buy a slice of pizza and it's put into a box,
12 just to make sure that the area out front of
13 the establishment is clear of any boxes or
14 paper plates or anything like that.

15 CHAIR LOUD: Okay. All right. Is
16 there a motion?

17 VICE CHAIR DETTMAN: I'll move for
18 approval of Application No. 17953 of Capitol
19 Pizza Mia, pursuant to 11 DCMR 3104.1, for a
20 special exception for a fast food restaurant
21 under section 773, in the C-2-A District
22 located at 2005 18th Street, N.W.

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1 CHAIRPERSON LOUD: As conditioned?

2 VICE CHAIR DETTMAN: As
3 conditioned.

4 CHAIR LOUD: Thank you, sir. The
5 motion has been made. Is there a second?

6 MEMBER MOLDENHAUER: I second.

7 CHAIR LOUD: Motion has been made
8 and seconded. Is there any further
9 deliberation? Hearing none, all those in
10 favor say aye.

11 (Chorus of ayes.)

12 CHAIR LOUD: All those opposed?

13 (No response.)

14 CHAIR LOUD: Are there any
15 abstentions?

16 Mr. Moy, can you read back the vote
17 for us, please?

18 MR. MOY: Yes, sir. Before I read
19 back the vote, Mr. Chairman, we do have an
20 absentee ballot from another participant on
21 this application. His name is Mr. Turnbull,
22 and he submitted an absentee ballot, absentee

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1 vote and vote reads to approve Application
2 17953 with such conditions as the Board may
3 impose.

4 Also in his comments for conditions
5 to address hours of operation, trash pickup
6 which Mr. Dettman has covered. So this is on
7 the motion of Mr. Dettman, Vice Chair to
8 approve the application as conditioned,
9 seconded by Ms. Moldenhauer; also in support
10 of the motion, Mr. Loud, and absentee vote in
11 support from Mr. Turnbull which would give a
12 total vote of 4 to 0 to 1.

13 CHAIR LOUD: Thank you, Mr. Moy.
14 Is there anything further on this case?

15 MR. MOY: Nothing further, unless
16 the Board wanted to consider a summary order
17 or not.

18 CHAIR LOUD: Was there opposition
19 in this case from the ANC? No? Okay. Yes,
20 in fact, we can issue a summary order, there
21 are no parties in opposition, I think that
22 that's what we should do.

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1 MR. MOY: Very good.

2 CHAIR LOUD: Thank you, sir.
3 Anything further on the morning meeting
4 calendar?

5 MR. MOY: No, sir.

6 CHAIR LOUD: So the morning meeting
7 calendar is adjourned.

8 (Whereupon, the above-entitled
9 matter went off the record at 10:05 a.m.)

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