

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 14, 2008

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:00 a.m., RUTHANNE G. MILLER, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes
from the Special Public Meeting held on
October 14, 2008.

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P-R-O-C-E-E-D-I-N-G-S

(10:00 a.m.)

CHAIRPERSON MILLER: This is the October 14th, 2008 Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm the Chair of the BZA.

To my right is Mr. Marc Loud, our Vice Chair. To my left is Mr. Shane Dettman, Board Member.

And next to Mr. Dettman is Mr. Clifford Moy from the Office of Zoning, Ms. Lori Monroe from the Office of Attorney General, and Ms. Beverley Bailey from 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 proceeding is being recorded by a court reporter and it is also webcast live.

1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

4 Please turn off all beepers and
5 cell phones.

6 Does the staff have any
7 preliminary matters?

8 MR. MOY: No, Madam Chair.

9 CHAIRPERSON MILLER: Okay, in
10 which case, let's proceed with the agenda.
11 And I would also like to announce that
12 following this meeting we will have our public
13 hearing for this morning.

14 MR. MOY: Good morning, Madam
15 Chair and members of the Board.

16 The first and only case for a
17 decision is Application No. 17800 of D.C.
18 Carry-Out. This is pursuant to 11 DCMR 3104.1
19 for a special exception to allow a fast food
20 restaurant under Section 733 in the C-2-A
21 District at premises 2427 Minnesota Avenue,
22 S.E. This is in Square 5578, Lot 74.

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1 On September 9th, 2008, the Board
2 completed public testimony, closed the record,
3 and scheduled its decision on October 14th.
4 The Board requested that the applicant submit
5 additional information to supplement the
6 record. Staff can go over each of these items
7 if the Board desires.

8 The record was also open to allow
9 a response from ANC-8A. That filing has not
10 be submitted to the record. We do have a
11 filing from the applicant, Madam Chair, and
12 that is in your case folders dated September
13 30, 2008. And is identified as Exhibit 34.

14 The Board is asked on the merits
15 of the special exception relief. And that
16 completes the staff's briefing, Madam Chair.

17 CHAIRPERSON MILLER: Thank you,
18 Mr. Moy.

19 Mr. Moy made reference to -- at
20 our last hearing we had extensive discussion
21 with respect to the applicant's plans and
22 compliance with the regulations and areas

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1 where they weren't in compliance. And at that
2 hearing, at the end, the Board identified a
3 series of documents and information that the
4 applicant should submit for the Board's
5 decision.

6 I'm not sure whether we should go
7 through that. I think maybe we should, Mr.
8 Moy, because the applicant did submit a
9 document showing a lot of information
10 responsive to what the Board asked for. But
11 it isn't complete. And so maybe it would be
12 helpful to identify that in case the applicant
13 missed that somehow.

14 So did you want to go through
15 that? Or actually let me highlight it
16 perhaps.

17 The applicant submitted exhibit
18 number 34, which is very extensive with
19 respect to showing great improvements to the
20 carry-out restaurant, which is governed by our
21 regulations under section 733. I believe the
22 ANC had described it as being in a state of

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1 blight, which the applicant had disagreed
2 with.

3 But in any event, they did make
4 extensive changes in response to some of what
5 we asked for. One dealt with the paint. I
6 guess we had asked for paint colors to show us
7 how they would paint the building to remove
8 the graffiti. And what they did was it looks
9 like they, in fact, already painted the
10 building. And they show that by a photograph
11 on exhibit 34. So I think that they have met
12 certainly that concern of the Board's.

13 I recall that Mr. Jeffries, in
14 particular, asked them to relocate the menus,
15 which were taped up or on the storefront
16 windows. And put it in a structure on the
17 walls instead. And they did do that. And
18 that is shown on exhibit 34.

19 They removed or fixed the metal
20 flap on the exhaust vent.

21 Now they were -- I have in our
22 notes that they were supposed to have a

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1 landscape plan or some sort to show site
2 locations of proposed potted plants to
3 beautify the area around the carry-out. And
4 they show in pictures that they have bought
5 plants and where they would locate them. So
6 they did that.

7 And okay, I think what they didn't
8 do, the one thing that they did not do, which
9 is required by our regulations, is provide
10 information on a trash enclosure.

11 We had asked them to provide
12 drawings and a design, including dimensions
13 and material, and a picture of the proposed
14 enclosures superimposed at the proposed
15 location. There was also discussion as to,
16 you know, where the best location for the
17 trash enclosure would be.

18 We have a specific regulation that
19 goes to trash enclosures for carry-out
20 restaurants that is set forth at 733.4. There
21 was a lot of discussion at the hearing about
22 the trash enclosure. And I even reviewed some

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1 of the transcript to see whether there was
2 some ambiguity here because the applicant on
3 exhibit 34 identified enclosing the trash
4 dumpster with an appropriate material as
5 something that they were to do. And they
6 wrote next to it optional. However, it wasn't
7 optional.

8 I think that if there is any way
9 that they could have interpreted it as meaning
10 optional, I guess we had a discussion about
11 the Board's ability to modify, perhaps, some
12 of the regulations under 733.

13 However, at the hearing, this was
14 specifically discussed and we said that we
15 would not be modifying this one. That this
16 was very clearly an important regulation. And
17 we could see how badly the trash cans looked
18 without being enclosed.

19 So that is one thing I think is
20 missing. And then also Office of Planning had
21 proposed as a condition, and I believed we
22 discussed this as well, that they have a term,

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1 I believe -- oh no, that they identify their
2 hours of operation, sorry. And that hasn't
3 been done.

4 So in light of the great, I think,
5 progress that has been shown to us as to how
6 this fast food business is transforming into
7 a, you know, much more appealing-looking
8 business in this neighborhood, I think I would
9 suggest that we postpone this one more time,
10 perhaps for a month, to give them the
11 opportunity to comply with the regulation that
12 they need to comply with in order for us to
13 grant this special exception in this case,
14 that being 733.4 which talks about a dumpster
15 being housed in an enclosure.

16 And in that time, that they also
17 provide us the hours of operation and that
18 they serve this filing on the ANC, who is
19 automatically a party to the case. And I
20 think certify to us that this has been served
21 on the ANC as well as the previous filings
22 because that isn't really clear from their

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1 exhibit 34.

2 Even though they really did a very
3 good job of showing compliance with all the
4 other regulations, they seem to have missed
5 this one, this very, very important one.

6 So are there other comments on
7 this?

8 VICE CHAIRMAN LOUD: Very briefly,
9 Madam Chair, just to go on the record saying
10 that I, too, think that the project has come
11 a long way from the original submission, in
12 particular say exhibit 8, which was the
13 property as presented to us for our initial
14 review of the application versus now exhibit
15 34, which shows the property with some
16 modifications based on the recommendations
17 made.

18 So I am for, particularly since
19 they have put so much effort into satisfying
20 section 733, giving them an additional 30 days
21 to address the remaining issues, largely the
22 trash enclosure issue. And then I'm looking

1 forward to voting favorably on the application
2 at that time.

3 Thank you.

4 Okay, let me see if I can try to
5 be as clear as possible then. What we are
6 seeking is the same thing with respect to
7 trash enclosure, that the applicant file
8 information on the trash enclosure in the form
9 of drawings and design, including dimensions
10 and material, and a picture of the proposed
11 enclosure superimposed at the proposed
12 location.

13 There was discussion when we left
14 off at the hearing as to, you know, where it
15 would be located. And one of the preferable
16 locations involved the approval of the
17 neighboring carry-out restaurant. And it
18 wasn't clear that that would happen. But just
19 to show us where it will be so we can make our
20 judgment on the regulations.

21 And then two, the hours of
22 operation. And then three, just certify that

1 this filing and the previous filings have been
2 served on the ANC and when.

3 So I think that that covers it.
4 Are we asking for any other information?

5 (No response.)

6 CHAIRPERSON MILLER: Okay.

7 And then, I guess, Ms. Bailey, if
8 you could set a schedule very similar to the
9 one that was just given on this case for one
10 more month, it would just allow the applicant
11 the time to file the additional information,
12 serve it on the ANC, and the ANC to respond,
13 I guess with a decision from us in a month.

14 MS. BAILEY: Madam Chair, did you
15 want to have the decision at the December 2nd
16 meeting? Or did you want to have it before
17 then?

18 CHAIRPERSON MILLER: I want to
19 look at my calendar. I think we are going to
20 try to have it before then. Just within a
21 month. We could just do a special --

22 MS. BAILEY: November 18th?

1 CHAIRPERSON MILLER: November 18?

2 MS. BAILEY: And so the
3 applicant's filing would be due November the
4 third? And submissions from the ANC by the
5 13th? To repeat the dates, the applicant's
6 filing would be November 3rd. The ANC is to
7 respond by November 13th. And then the Board
8 would consider a decision at a special public
9 meeting on November 18th.

10 CHAIRPERSON MILLER: Okay.

11 Any other comments on this case?

12 (No response.)

13 CHAIRPERSON MILLER: Okay. We
14 don't usually take testimony, however I see
15 that the applicant has a question. And I
16 think that we will do that in this case. If
17 you want to come to the table with a quick
18 question, that would be fine. We want to make
19 sure that the applicant understands, yes. Is
20 your mic on sir?

21 MR. SCARBOROUGH: The light's on.

22 CHAIRPERSON MILLER: Okay. You

1 got it.

2 MR. SCARBOROUGH: Oh, okay. In
3 our submission, the two areas that you feel
4 are missing are not really missing. The
5 optional thing concerning the trash is that
6 we've reduced the dumpster to super cans and
7 we can put those inside until we are ready for
8 trash pickup, which is every other day. And
9 that was the option we chose.

10 And that way we don't have to
11 build an enclosure around it, deal with public
12 space, and at more cost to Mr. Ahmadi. We can
13 keep our can inside. For your consideration.

14 CHAIRPERSON MILLER: Okay.

15 MR. SCARBOROUGH: The second thing
16 --

17 CHAIRPERSON MILLER: Certainly
18 that wasn't clear from the picture in exhibit
19 34 where we saw two --

20 MR. SCARBOROUGH: Well, the
21 picture shows that we removed the dumpster.

22 CHAIRPERSON MILLER: Yes, right.

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1 We were wondering about that. Okay.

2 MR. SCARBOROUGH: And placed two
3 cans -- well, in Mr. Ahmadi's excitement, he
4 just went ahead and did everything that he
5 thought would be okay. And I tried to slow
6 him down but there was no stopping him. He
7 wanted it over with. But --

8 And the other thing was the hours
9 of operation, I thought that they were written
10 down, 11 a.m. to 12 midnight. But if I'm
11 wrong, I'd like to include those hours. Those
12 are the hours -- 11 a.m. to 12 midnight.

13 CHAIRPERSON MILLER: And how many
14 days a week?

15 MR. SCARBOROUGH: Seven days a
16 week.

17 CHAIRPERSON MILLER: Seven days a
18 week, okay.

19 MR. SCARBOROUGH: And we also
20 wanted to let you know that we made service to
21 Mr. Anthony Muhammed, the chairman of the ANC,
22 same day that we provided you with that

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1 exhibit 34, that very same day. We went out
2 to Martin Luther King Avenue and presented it
3 to him. And had a brief meeting with him when
4 he went over the things.

5 As a matter of fact, he said well,
6 you say that you have met with me but you
7 haven't. I said yes, but we intended to and
8 we are meeting with you now.

9 Then we went to the public
10 meeting. When was that, Nessar?

11 MR. AHMADI: The seventh.

12 MR. SCARBOROUGH: The seventh of
13 this month on Good Hope Road and met with the
14 ANC, the body. And we've pretty much tried to
15 do everything that you have asked. And I was
16 hoping we wouldn't have to put the Board
17 through another day of this. I mean if you
18 can accept those responses, that is what I'd
19 like to include in our submission that you
20 feel is missing.

21 CHAIRPERSON MILLER: Okay, well
22 hold on a second. So let's just explore a

1 couple of those things in the event that --

2 MR. SCARBOROUGH: Sure, right.

3 Let me go sit back down.

4 CHAIRPERSON MILLER: No, stay
5 right there because I want to answer your
6 question. Well, first of all, was there a
7 vote on your application at the ANC?

8 MR. SCARBOROUGH: Well, yes, the
9 ANC -- see it is a funny thing, the ANC wasn't
10 really aware. I mean the rest of the ANC
11 wasn't aware. The Chairman was aware, Mr.
12 Muhammed. And I'm not sure whether it was a
13 collusion situation or what the deal was but
14 --

15 CHAIRPERSON MILLER: Okay. I
16 don't want you to -- this isn't a hearing --
17 I mean --

18 MR. SCARBOROUGH: We spoke to the
19 whole and they voted. And they said that they
20 wanted to see our petitions. We have
21 petitions. We have door-to-door petitions.
22 And so we provided them with those.

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1 And they said as far as they were
2 concerned, if it was okay with -- they didn't
3 really vote vote but it was pretty strange
4 actually.

5 CHAIRPERSON MILLER: Okay. All
6 right. Let me just ask you one other question
7 --

8 MR. SCARBOROUGH: Sure.

9 CHAIRPERSON MILLER: -- about your
10 keeping the trash inside. How does that work?
11 I mean do you have a special room inside where
12 the trash would be?

13 MR. SCARBOROUGH: Well, yes, it
14 would be in a special area inside. And you
15 see the trash is inside anyway until you bring
16 it outside and put it in the dumpster. So
17 what is the difference? We can just keep the
18 whole -- you know we have reduced the size of
19 our dumpster, remember, to super can size.
20 And one will suffice.

21 We've got it down to the fact that
22 we can handle all of our trash in one super

1 can because they collect it every day or every
2 other day.

3 CHAIRPERSON MILLER: What do you
4 mean or -- which is it?

5 MR. SCARBOROUGH: It is whichever
6 -- the same company that collects the trash
7 from our neighbor collects our trash as well.

8 So when they come to collect -- if
9 they feel that ours is -- they check ours. If
10 it is full, they empty it. And then they do
11 the larger dumpster that our neighbor has. So
12 they come every other day. And we don't make
13 a lot of trash.

14 CHAIRPERSON MILLER: So you have
15 one super can or two?

16 MR. SCARBOROUGH: Well, we tried -
17 - we reduced the size from the dumpster to two
18 super cans.

19 CHAIRPERSON MILLER: Two, okay.

20 MR. SCARBOROUGH: Then after we
21 watched the progression of how trash was
22 coming, going, et cetera, we realized well, we

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1 only need one can. And we can keep it inside.
2 And then roll it outside when the trash
3 collection guys come. This is a private
4 collection.

5 CHAIRPERSON MILLER: Okay, okay.
6 So what you are saying is it is only going to
7 be out there around the time they are going to
8 come and pick it up.

9 MR. SCARBOROUGH: That's right.
10 Then we will bring it back in.

11 CHAIRPERSON MILLER: Okay.

12 MR. SCARBOROUGH: So that was the
13 option. We were just trying to save a dollar,
14 Madam Chair. And be in compliance as well.

15 CHAIRPERSON MILLER: Well, the one
16 other question, when you say that then -- oh,
17 you still have a public space application
18 pending?

19 MR. SCARBOROUGH: Well, no, we
20 didn't. During the time that we've had for
21 this, DCRA was going through training for
22 their new system. And it was just almost

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1 impossible to get any response, any real
2 response from the powers that be at DDOT. No
3 one seemed to be able to assist us.

4 I guess with this -- with an extra
5 month, if that is what we need, we could go
6 through that process. But we thought about it
7 and said well, why don't we just keep our
8 trash inside until it is time to collect it.
9 Then roll it outside. And that seemed to
10 work.

11 CHAIRPERSON MILLER: Do others
12 have questions?

13 MEMBER DETTMAN: A couple
14 questions, Madam Chair.

15 With respect to the garbage, is it
16 being kept in that public area where the
17 people come in to pick up their food?

18 MR. SCARBOROUGH: No.

19 MEMBER DETTMAN: It is behind the
20 counter?

21 MR. SCARBOROUGH: Oh, yes. It is
22 behind.

1 MEMBER DETTMAN: Okay. And when
2 it is rolled out on pick up day --

3 MR. SCARBOROUGH: We can roll it
4 out the side door.

5 MEMBER DETTMAN: Okay. And when
6 it is out there on the day it is going to be
7 picked up, how long is it out there?

8 MR. SCARBOROUGH: Maybe an hour
9 and a half.

10 MEMBER DETTMAN: Okay.

11 MR. SCARBOROUGH: And then we can
12 clean up any trash that the trash guys might
13 have made a mess and then roll our can back
14 inside.

15 MEMBER DETTMAN: Okay. Now that
16 you have reduced it down to one super can,
17 which is great, it seems to me like you might
18 now be able to share a dumpster with your next
19 door neighbors. I know the relationship there
20 is a little bit contentious.

21 MR. SCARBOROUGH: We would love
22 to. We would love to share the dumpster.

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1 MEMBER DETTMAN: Okay.

2 MR. SCARBOROUGH: But it just --
3 it is not going to work.

4 MEMBER DETTMAN: Okay.

5 MR. SCARBOROUGH: And, Mr.
6 Dettman, believe me, we've made every
7 approach, every -- opened every avenue. Just
8 -- it is a bad blood situation.

9 MEMBER DETTMAN: Okay.

10 MR. SCARBOROUGH: As a matter of
11 fact, we are in court over --

12 MEMBER DETTMAN: Okay.

13 MR. SCARBOROUGH: -- a fish
14 sandwich. That is how sad it is.

15 MEMBER DETTMAN: Okay. Well, I
16 know that you have made great efforts. I mean
17 I have to commend you on the improvements to
18 the property.

19 MR. SCARBOROUGH: Thank you.

20 MEMBER DETTMAN: I mean it is
21 really great.

22 MR. SCARBOROUGH: And everyone

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1 says that it looks really nice. And we are
2 proud of it. And we want to continue doing
3 business. That's all.

4 MEMBER DETTMAN: Okay.

5 CHAIRPERSON MILLER: Okay. Thank
6 you, that was very helpful. I'm glad you came
7 forward.

8 VICE CHAIRMAN LOUD: Madam Chair,
9 I have one question. And I, too, join
10 Commissioner Dettman in commending the project
11 and how -- the improvement, significantly.

12 And I just don't have a strong
13 enough background in the operation of these
14 carry-outs to know the answer to this
15 question. But the question is for anybody.
16 Is there a requirement from DCRA that there be
17 an external dumpster for these carry-outs?
18 Okay.

19 MS. MONROE: I don't know DCRA
20 requires but I do know in the regs it says any
21 refuse dumpster shall be housed in meaning
22 any, if you have one. If you don't have one

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1 -- it doesn't say every carry-out must have a
2 refuse dumpster which shall be housed in.

3 I mean I would take that to mean
4 you don't have to have one. If you can do
5 something else that is equally good, that's
6 good enough. That's the way I would read that
7 reg.

8 VICE CHAIRMAN LOUD: Thank you.

9 MR. SCARBOROUGH: Oh, I'm sorry,
10 Ms. Miller, I remember now why --

11 CHAIRPERSON MILLER: Go ahead.

12 MR. SCARBOROUGH: -- it was that
13 they didn't have a vote. They didn't have
14 enough members. They didn't have enough for
15 a -- what is it? A quorum. They didn't have
16 a quorum. Then they were busy arguing and
17 fighting --

18 CHAIRPERSON MILLER: Okay. I
19 hesitate to have you testify too much about
20 the ANC without the ANC being here.

21 MR. SCARBOROUGH: Oh, okay.

22 CHAIRPERSON MILLER: But I think

1 that what was -- it is okay -- I wanted to
2 hear you testify with respect to that you
3 served the papers on them. Or that you
4 discussed with them because you are required,
5 because they are a party, to serve the papers
6 on them.

7 MR. SCARBOROUGH: We did.

8 CHAIRPERSON MILLER: And you said
9 you did that at least.

10 MR. SCARBOROUGH: That's right.

11 CHAIRPERSON MILLER: And you
12 discussed -- so that's fine. And you have
13 addressed the trash enclosure issue, which we
14 didn't understand what was happening with that
15 based on just exhibit 34.

16 MR. SCARBOROUGH: I thought they'd
17 have an opportunity to explain that to you.

18 CHAIRPERSON MILLER: Okay. So you
19 did. And so what the Board wants to do right
20 now is just take a minute and look at that
21 issue. And see whether or not then we can
22 decide this today given there wouldn't be any

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1 additional filings.

2 You've given us the hours of
3 operation. And you've given us the
4 explanation about the trash enclosure. So
5 we're just going to take a minute and look at
6 the regulations governing the trash enclosure.

7 So you can go back now, I think,
8 unless there is anything else you needed to
9 say. Okay. Thank you. That was very
10 helpful.

11 Okay, I would suggest that we
12 decide this case today. And that we do
13 actually have all the information now that we
14 need to make the decision. And we do have
15 testimony that the ANC was, in fact, served.

16 So does anybody want to start the
17 decision-making on this application?

18 VICE CHAIRMAN LOUD: Madam Chair,
19 let me start us off. And let me begin by
20 moving approval of BZA Application No. 17800,
21 2427 Minnesota Avenue S.E., special exception
22 request for fast food establishment in the C-

1 2-A.

2 And let me articulate the reasons
3 why I'm motioning approval.

4 CHAIRPERSON MILLER: I will second
5 that.

6 VICE CHAIRMAN LOUD: Okay.
7 Essentially the application is to operate a
8 fast food carry-out in a building that is less
9 than 1,500 square feet at 25th and Minnesota
10 Avenue, S.E.

11 Apparently, from the record, the
12 carry-out has been there or a carry-out has
13 been there for about eight years. The permit
14 to continue operation of it lapsed around
15 March of this year. And because it is not a
16 matter-of-right use in the C-2-A, the
17 applicant is before us for a special
18 exception.

19 Our rules require that we follow
20 section 733 in order to authorize the special
21 exception use for the fast food carry-out.
22 And we have reviewed this application in the

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1 context of 733 throughout the several hearings
2 that we've had.

3 In particular, the Office of
4 Planning submitted a report, which is our
5 exhibit 27, dated July 15, 2008. And in that
6 report, they do a very good job of walking
7 through section 733 as apply to the facts in
8 this case.

9 And I'm just very briefly -- first
10 of all, I want to incorporate that, by
11 reference, into my comments on the record and
12 just very briefly walk through some of those
13 elements.

14 I think the ones in particular
15 that we'll have some extended discussion
16 around would be the issue of the enclosed
17 trash dumpster and the alternative plan that
18 they are recommending.

19 But nonetheless, since 733 has to
20 be complied with to get permission for the
21 carry-out in C-2-A, let me just walk briefly
22 through those. And these start at page three

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1 of OP's report.

2 First of all, no part of the lot
3 on which the use is located shall be within 25
4 feet of a resident's district. In this case,
5 no part of this lot is within 25 feet from the
6 nearest resident's district line.

7 Section 33 continues, if any part
8 of the lot line abuts an alley containing the
9 zone district boundary line then a continuous
10 brick wall of at least six feet high and 12
11 inches thick shall be constructed and
12 maintained the entire length of the lot line.
13 In this case, no part of the lot line abuts an
14 alley.

15 Section 733.4, any refuse
16 dumpsters shall be housed in a three-sided
17 brick enclosure equal in height to the
18 dumpster or six feet high, whichever is
19 greater.

20 We've had some discussion about
21 that this morning. And are construing that
22 provision not to require that there be an

1 outside dumpster. But rather that if there is
2 one, then the following conditions apply to
3 that.

4 With respect to maintaining the
5 trash on site and carrying the trash away, the
6 applicant is proposing that the garbage will
7 be substantially collected, stored, maintained
8 inside of the carry-out.

9 And I believe that it will be
10 carted outside just for the purposes of its
11 removal by a commercial carrier. And that
12 that is going to happen every other day. Is
13 that correct? That's going to happen every
14 other day.

15 And so the trash will be on site.
16 And per Mr. Dettman's question, it will be on
17 site away from where the food is being
18 purchased and away from where the customers in
19 the business will be.

20 Continuing further under section
21 733, the use shall not include a drive
22 through. That's not the case here. They are

1 in compliance there.

2 Section 733.6, there shall be no
3 customer entrance in the side or rear of the
4 building, it faces a street alley or -- oh,
5 I'm sorry, or alley containing a zone district
6 boundary. That is not the case there. There
7 is nothing in the record to suggest that there
8 will be a customer entrance at the side or the
9 rear.

10 The use of the property shall be
11 designed or operated so as not to become
12 objectionable to neighboring properties
13 because of noise, sounds, odors, lights, hours
14 of operations, or other conditions.

15 Early on there was some concern
16 about the exterior walls and the graffiti, the
17 exhaust vent and its appearance directly onto,
18 I think, the corner of 25th and Minnesota
19 Avenue, the extensive window pollution, as it
20 were, or size might be a better word, all of
21 those items were addressed with respect to
22 applicant's submission of exhibit 34.

1 The graffiti has been removed.
2 There has been some -- the exhaust vents have
3 been addressed by the applicant. The -- what
4 were some of the other pieces -- the hours of
5 operation, I think, we've cleared up this
6 morning. They are going to be 11 a.m. to
7 midnight, seven days per week.

8 There was some attempt to spruce
9 up the external appearance via the purchase
10 and storing of plants directly outside of the
11 property, the signage indicating what the menu
12 will be has been removed off of the window and
13 there is a non-exterior signboard that has
14 that information available. So I think that
15 733.7 has been addressed.

16 And, of course, I defer to my
17 colleagues if they want to add or clarify some
18 part of that.

19 CHAIRPERSON MILLER: Well, I just
20 want to comment that I think that when you
21 finish going through the regulations that we
22 may have some conditions and that some of them

1 may relate to, you know, the trash or the
2 things like that.

3 VICE CHAIRMAN LOUD: Okay. Then
4 let me speed myself up concluding the 733.

5 In terms of 733.8, the use shall
6 provide sufficient off-street parking. It is
7 not an issue here because the entire floor
8 area is less than 1,500 square feet. And so
9 parking is not required.

10 The use shall be located and
11 designed so as not to create dangerous or
12 other objectionable traffic condition. Again,
13 that's not the facts in this case. The record
14 before us doesn't suggest that that would be
15 a problem. And OP has noted that most
16 customers appear to arrive on foot or use
17 short-term on-street parking. So that is not
18 an issue here.

19 Section 733.10, there shall be
20 adequate facilities to allow deliveries to be
21 made and trash to be collected without
22 obstructing public rights of way or

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1 unreasonably obstructing parking spaces,
2 aisles, or driveways on site.

3 With respect to that requirement,
4 I think the only issue that the record sort of
5 raises for us was the issue of the dumpster,
6 its placement on public space.

7 The applicant proposes to resolve
8 that by just keeping, as we talked extensively
9 about, keeping the trash inside except for
10 alternate days when it would be brought out
11 just for the commercial carrier to pull it
12 away. And then it would be brought right back
13 inside of the property.

14 So I don't think that there is a
15 challenge with that part of section 733.

16 The Board may impose conditions
17 pertaining to design, screening, lighting,
18 soundproofing, et cetera. Those are described
19 under section 733.11. I think we are going to
20 allude back to that when we talk about
21 conditions.

22 But some of what OP had

1 recommended in terms of graffiti, regular
2 litter clean up and the like, they have
3 addressed. And what they have not addressed
4 through exhibit 34 we will discuss some
5 conditions.

6 And I believe that that is it in
7 terms of meeting the requirements of section
8 733. I'll defer now to colleagues and see if
9 there are some additional considerations.

10 CHAIRPERSON MILLER: Well, why
11 don't we discuss the trash situation because
12 I think that was our major concern here.

13 And the reason that we decided to
14 go forward today was because the applicant
15 represented that they were going to be keeping
16 the trash inside except for when it was going
17 to be picked up basically.

18 And I think -- I just would
19 suggest that we try to fashion a good
20 condition for that because as I was sitting
21 here thinking, you know, well that is great if
22 they keep it inside except for when it is

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1 going to be picked up but it is going to be
2 picked up every other day or every day.

3 So I wouldn't want to say that it
4 has to be outside only on days when it is
5 going to be picked up. Then if it were to be
6 picked up every day, it might sit there every
7 day. So I don't know, maybe we can just frame
8 it that the trash will be kept inside except
9 for its placement within a few hours of pick
10 up.

11 I mean I'd like to -- we don't
12 know exactly the situation here. And I don't
13 -- I want to make it a condition that is, you
14 know, clear and enforceable. And gets the
15 result that we are looking for.

16 We don't know how many -- we don't
17 know what time it is going to be picked up.
18 But I think the point is it should only be
19 outside a few hours or something, you know,
20 because the whole point was that it not be a
21 blight on the neighborhood to have trash
22 sitting out there.

1 So let me see. Does anybody have
2 an idea on the language?

3 (No response.)

4 CHAIRPERSON MILLER: All right.
5 Okay. I guess we could make one exception.
6 Sure. Okay. Because what we want to do is --

7 PARTICIPANT: This will help.

8 CHAIRPERSON MILLER: Okay.

9 Because what we want to do is --

10 PARTICIPANT: This will help.

11 CHAIRPERSON MILLER: Okay. We
12 want to narrow it to what --

13 MR. SCARBOROUGH: Am I still on?

14 CHAIRPERSON MILLER: Yes, sir.

15 MR. SCARBOROUGH: They collect the
16 trash between --

17 CHAIRPERSON MILLER: Well, you
18 probably to identify yourself again.

19 MR. SCARBOROUGH: Glen
20 Scarborough.

21 CHAIRPERSON MILLER: Okay. That's
22 fine.

1 MR. SCARBOROUGH: They collect the
2 trash every day between two and three-thirty.
3 So between one and four? And we can bring the
4 dumpster out between two and four. Two hours.
5 But that's all we need. We can roll it out.

6 They come every day between -- or
7 every other day between two and three-thirty.
8 So when they come, that is the length of time
9 we would need to be outside. And we will
10 bring it back inside. And you can make that
11 part of the conditions.

12 CHAIRPERSON MILLER: Okay. So no
13 more than between two and four. Okay. So it
14 would be something like trash may be placed --
15 trash may only be placed outside on days of
16 pick up between the hours of two and four.
17 How does that sound?

18 VICE CHAIRMAN LOUD: I think that
19 sounds -- I'm sorry. I think it is good,
20 Madam Chair. I think it hits the main goal we
21 are after which is to restrict the placement
22 of the trash in the public space for as much

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1 as we can restrict it.

2 And I think your wording narrows
3 it just to those days that it is going to be
4 picked up. And just to about an hour so on
5 both bookends of the pick up. But I see AG
6 may want to --

7 MS. MONROE: The only reason I'm
8 looking skeptical is if that trash company
9 ever decides to change its route and not hit
10 you guys between two and four but hit you
11 between nine and ten in the morning or
12 whatever, as does happen sometimes, then the
13 condition hold any more.

14 And then, you know, you'd have to
15 come back and have them changed or whatever.

16 CHAIRPERSON MILLER: All right.
17 How about if we did it for two hours period.

18 MS. MONROE: I don't know. I'm
19 not trying to give you a hard time. I'm just
20 saying it may be more flexibility. I don't
21 know.

22 CHAIRPERSON MILLER: True. Right.

1 Why don't we just for a two-hour period on
2 days of pick up.

3 I mean I think if the community
4 could monitor that, I mean they could watch
5 and see, you know. If it is out there all
6 day, it's not out there for two hours. And
7 that -- what do you think? Okay.

8 Trash may only be placed outside
9 for a two-hour period on days of pick up.
10 Okay? We can finesse it a little bit before
11 we send the order out. But I think that that
12 is the concept that we would -- you know?
13 Okay.

14 Another condition would be the
15 hours of operation from 11 a.m. to midnight,
16 12 p.m. And that comes from the Office of
17 Planning making that recommendation that there
18 be hours of operation that, I believe, were
19 acceptable or something for the community.

20 And I don't recall any testimony,
21 you know, differing from those hours. So I
22 think we can go with those hours.

1 And the Office of Planning also
2 recommended a term of three years, I think.
3 Do you have comments on that?

4 (No response.)

5 CHAIRPERSON MILLER: We have the
6 fact that there has been a fast food
7 restaurant here for eight years apparently.
8 But I can't say it hasn't been with any
9 adverse impacts because it was in a state of
10 blight so much when we saw it. Not that that
11 -- this applicant didn't have it for eight
12 years.

13 However, I think that since there
14 is a question about the operation, a term is
15 useful. What do you think? Other comments?

16 VICE CHAIRMAN LOUD: I agree with
17 the term, Madam Chair. I think it gives the
18 applicant -- not that this particular
19 applicant would need it but this applicant may
20 sell.

21 It gives the operator the clear
22 incentive to continue the level of upgrade

1 that this applicant is demonstrating to the
2 Board. So I would be for that initial three-
3 year term. And then we can see what happens
4 after that.

5 I note that OP recommends that
6 after that three-year sort of inspection,
7 they'd be willing to consider an unlimited or
8 much longer. And I think, you know, if I'm
9 still here, I would as well. But in the
10 interim, I think three years is a good
11 performance measurement.

12 CHAIRPERSON MILLER: Okay. I
13 would agree. And often when something is new,
14 we sometimes -- and there is a question -- we
15 put a term on it just to make sure that it
16 works out. So that's three conditions.

17 Four -- I think we could add a
18 condition. Tell me what you think about that
19 they maintain the property in a litter-free --
20 that they maintain the property litter-free
21 around the exterior of the building, something
22 to that effect. We have a commitment by the

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1 applicant to do that in exhibit 34 in any
2 event.

3 VICE CHAIRMAN LOUD: I'm for that
4 condition. My only hesitancy is that, you
5 know, seeing a lot of these places on Georgia
6 Avenue, you can clean it up around 12 noon or
7 something. A group of folks come by 12:30 and
8 drop trash.

9 I would hate for this applicant --
10 for someone to accuse this applicant of not
11 maintaining it litter free when they have
12 regular cleanings and sweepings. And it just
13 so happens that someone has dropped trash, you
14 know, right after a regular cleaning.

15 So I'm wondering if we can refine
16 the language a little bit. And I'm just
17 throwing this out. I don't know if this is
18 something that is workable but to have --
19 instead of saying regular cleaning or
20 maintenance just indicate that the applicant
21 will retrieve trash and debris from its
22 property, you know, at 11 a.m. then again at

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1 2 p.m. or something like that.

2 MS. MONROE: Can I interject? You
3 might just say something like make best
4 efforts to or something like that -- maintain
5 a litter-free environment. Or something --
6 its very vague but it is a very hard thing to
7 enforce and do, as you said.

8 VICE CHAIRMAN LOUD: Right.

9 CHAIRPERSON MILLER: Or we could
10 say that they can clean up litter and debris
11 on a daily basis.

12 VICE CHAIRMAN LOUD: Just once per
13 day.

14 CHAIRPERSON MILLER: I really
15 don't know how often they should do it. But
16 my problem with best efforts is they are like
17 totally unmeasurable I think.

18 VICE CHAIRMAN LOUD: It's in the
19 applicant's, to me, best interest to keep the
20 --

21 CHAIRPERSON MILLER: Yes.

22 VICE CHAIRMAN LOUD: -- property

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1 clean. Hopefully people, I'm sure, won't walk
2 over mounds of trash to get to his product.
3 But that being said, I don't see any
4 particular burden on the applicant to cleaning
5 up twice a day, you know once early in the
6 morning, collecting the overnight trash and
7 then once in the afternoon after it has been
8 open for several hours. It may have
9 accumulated some more trash.

10 So I feel comfortable saying 11
11 a.m. and 3 p.m. or something like that. And
12 we'll see how it works out.

13 CHAIRPERSON MILLER: Okay. Rather
14 than like twice a day, you'd rather -- you
15 wanted to set hours? I mean --

16 VICE CHAIRMAN LOUD: No, no, we
17 can say twice a day. That's fine.

18 CHAIRPERSON MILLER: Okay.

19 VICE CHAIRMAN LOUD: We can leave
20 it to the applicant's discretion --

21 CHAIRPERSON MILLER: Okay.

22 VICE CHAIRMAN LOUD: -- as to, you

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1 know, what fits best.

2 CHAIRPERSON MILLER: Because maybe
3 they would do it after closing or -- all
4 right. Okay. So clean exterior of debris two
5 times a day.

6 VICE CHAIRMAN LOUD: Right.
7 Retrieve trash --

8 CHAIRPERSON MILLER: Okay.

9 VICE CHAIRMAN LOUD: -- and
10 debris. And as you said, clean the area
11 surrounding the property.

12 CHAIRPERSON MILLER: Okay. Again,
13 I don't think that there is a problem if we
14 finesse this specific language.

15 VICE CHAIRMAN LOUD: Yes.

16 CHAIRPERSON MILLER: You know,
17 it's going to go out in a written order what
18 the conditions are. But that they be, you
19 know, totally consistent with these concepts.
20 So -- okay.

21 I think that that is it. I have
22 the trash being outside, you know, only for

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1 the two-hour period on pick-up days. I have
2 the hours of operation, 11 a.m. to 12. I have
3 -- midnight -- to term three years, that's
4 three. Fourth is keep cleaning the exterior
5 of trash and debris or whatever two times a
6 day.

7 Was there anything else?

8 (No response.)

9 CHAIRPERSON MILLER: Okay. Okay.
10 So that's it with conditions. I'm not sure,
11 Mr. Loud, if you referenced that we did have
12 a letter from the Chairman of the ANC opposing
13 the special exception saying that the area was
14 saturated with fast food carry-outs and café
15 restaurants. And that another fast food
16 restaurant would disturb the peace, the quiet,
17 and the orderliness of the neighborhood. And
18 further erode the property value in the
19 community.

20 And he said that the Commission
21 opposed this special exception however this is
22 a letter signed by the Chairman with no

1 evidence that there was any vote on the
2 application, that there was any, you know,
3 public meeting when this was written with a
4 quorum present.

5 And, therefore, I can't conclude
6 that this represents the position of the ANC.
7 Would you agree?

8 So we can accept this into the
9 record as the position of the Chairman of the
10 ANC. And it is the ANC that is the party and
11 not the chair. Any other filings that we want
12 to highlight?

13 (No response.)

14 CHAIRPERSON MILLER: So I would
15 say we do not have a report from the ANC,
16 which we would give great weight to in our
17 record.

18 Any other comments then?

19 (No response.)

20 CHAIRPERSON MILLER: Okay. I
21 think that what we've done is gone through the
22 elements of 733 that are required in order to

1 grant a special exception for the carry-out
2 restaurant. And found that the applicant is
3 in compliance.

4 And that there would not be an
5 adverse impact on the neighboring community
6 provided -- you know, it also is accompanied
7 by the four conditions that we mentioned. And
8 that will be put in the order.

9 Any other comments?

10 (No response.)

11 CHAIRPERSON MILLER: Okay. Then
12 there has been a motion that has been seconded
13 to approve the application. Those in favor
14 say aye.

15 (Chorus of ayes.)

16 CHAIRPERSON MILLER: All those
17 opposed? All those abstaining?

18 And would you call the vote
19 please?

20 MR. MOY: Yes, Madam Chair, staff
21 would record the vote as three to zero to one.
22 This is on the motion of Mr. Loud to approve

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1 the application with this condition, the four
2 conditions as described earlier, seconded by
3 Ms. Miller, the Chair, Mr. Dettman in support
4 of the motion. We have the Zoning Commission
5 member not present, not voting.

6 Finally, Madam Chair, we also have
7 an absentee ballot from Ms. Mary Oates Walker.
8 And her absentee vote is to approve the
9 application with such conditions as the Board
10 may impose.

11 That would give a final vote of
12 four to zero to one. And I think that's it
13 depending on whether the Board would care for
14 a summary order or a full order.

15 CHAIRPERSON MILLER: Yes, this
16 could be a summary order as there is no party
17 in opposition.

18 MR. MOY: That's correct.

19 CHAIRPERSON MILLER: Okay.

20 MR. MOY: Thank you.

21 CHAIRPERSON MILLER: Thank you
22 very much.

1 So you should expect your order
2 shortly -- within the week anyway. Okay.
3 Thank you very much.

4 Mr. Moy, do we have any other
5 items on our public meeting agenda?

6 MR. MOY: No, Madam Chair, that
7 completes this special public meeting.

8 CHAIRPERSON MILLER: Okay. Then
9 this meeting is adjourned.

10 (Whereupon, the above-entitled
11 special public meeting was concluded at 10:53
12 a.m.)

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