

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY  
APRIL 21, 2009

+ + + + +

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, Chairman,  
SHANE L. DETTMAN, Vice Chairman

ZONING COMMISSION MEMBER PRESENT:  
MICHAEL G. TURNBULL, FAIA,  
Commissioner (OAC)

OFFICE OF ZONING STAFF PRESENT:  
CLIFFORD MOY, Secretary  
TRACEY W. ROSE, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:  
MARY NAGELHOUT, ESQ.

The transcript constitutes the  
minutes from the Public Meeting held on  
April 21, 2009.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Marc F. Loud. . . . .3

EAST CAPITOL MINNESOTA, LLC

APPLICATION NO. 17901

ZONING COMMISSION:

Michael G. Turnbull . . . . .6

VOTE TO APPROVE 17901 (3-0-2):. . . . . 21

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

9:43 a.m.

CHAIRPERSON LOUD: This meeting  
will please come to order.

Good morning, ladies and  
gentlemen. This is the April 21st public  
meeting of the Board of Zoning Adjustment of  
the District of Columbia. My name is Marc  
Loud. I'm the chairperson. Joining me today  
are Vice-Chair Shane Dettman to my right  
representing the National Planning Commission.  
Michael Turnbull to his immediate right,  
representing the Zoning Commission. To my  
left is Clifford Moy, Secretary of the BZA and  
to his immediate left is Mary Nagelhout of the  
Office of the Attorney General. And on the  
far end is Tracey.

And if you will tell me your last  
name?

Tracey Rose, whom I've worked with  
but I'm just getting familiar with all of the  
last names.

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

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

7                   Please be advised that this  
8 proceeding is being recorded by a court  
9 reporter and is also webcast live.  
10 Accordingly, we must ask you to refrain from  
11 any disruptive noises or actions in the  
12 hearing room. Please turn off all beepers and  
13 cell phones.

14                   Does the staff have any  
15 preliminary matters?

16                   MR. MOY: No, sir, not this  
17 morning.

18                   CHAIRPERSON LOUD: Thank you, sir.

19                   If not, then let us proceed with  
20 calling the public meeting case.

21                   MR. MOY: Good morning, Chairman  
22 and Members of the Board.

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1                   The first and only case for  
2                   decision in this special public meeting is  
3                   application No. 17901 of East Capitol  
4                   Minnesota, LLC, pursuant to 11 DCMR 3104.1 and  
5                   3013.2. And this is for a special exception  
6                   to allow a food delivery/carry out service, a  
7                   Papa John's Pizza, under section 734, and  
8                   variances from the requirement for a brick  
9                   wall along the alley lot line and enclosed  
10                  refuse dumpster under subsections 734.3 and  
11                  734.4, respectively. And this is in the C-2-A  
12                  District at premises 3548 East Capital Street,  
13                  N.E. This is in Square 5047, Lot 801.

14                   If the Board will recall, on April  
15                   7th, 2009 the Board completed public  
16                   testimony, closed the record and scheduled its  
17                   decision at a special public meeting on April  
18                   the 14th. The Board requested additional  
19                   information to supplement the record from the  
20                   applicant with respect to a revised landscape  
21                   plan and drawings for proposed screen  
22                   enclosures.

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1                   That filing, Mr. Chairman, was  
2 submitted by the applicant on April 15th, 2009  
3 and is identified as Exhibit 39.

4                   The Board is to act on the merits  
5 of the request for a special exception and  
6 variance relief.

7                   And that completes the staff's  
8 briefing, Mr. Chairman.

9                   CHAIRPERSON LOUD: Thank you, Mr.  
10 Moy.

11                   The application is for two  
12 variances, as Mr. Moy indicated, one special  
13 exception relating to section 734. We did  
14 receive Exhibit 39 supplementing the record  
15 which I believe was the site plan was  
16 indicated by Mr. Moy.

17                   I think we're prepared to begin  
18 our deliberations and render a decision on  
19 this. And I think, Mr. Turnbull, you were  
20 going to start us off.

21                   COMMISSIONER TURNBULL: Thank you,  
22 Mr. Chair.

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1           As Mr. Moy had pointed out that  
2 this is a special exception under 734.

3           Just going back, just to review a  
4 little bit on this before we get into it, the  
5 requirement for this was to have a -- this has  
6 a rear yard of four feet and that's got a  
7 cyclone fence. But under this regulation to  
8 screen the -- I'll just read from it.

9           "If a lot line abuts an alley  
10 containing a zone district boundary line for  
11 a residence district, a continuous brick wall  
12 at least six-feet high and 12-inches thick  
13 shall be constructed and maintained on the lot  
14 along the length of the lot line. The brick  
15 wall shall not be required in the case of a  
16 building that extends for the full width of  
17 the lot."

18           And that's what he's looking for  
19 relief on this, that the building is 300 feet  
20 long as it is now, or 310 feet long. But it  
21 has about another 200 feet of space which is  
22 open to the parking.

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1                   In his submittal to us, he has  
2                   clearly shown he's enclosed a dumpster area,  
3                   not only for the tenants' space and that's the  
4                   other part of this test which is difficult for  
5                   this site, is that the tenant space is not a  
6                   separate lot. This is part of an existing  
7                   retail complex which you have tenant spaces,  
8                   but it's all one lot, one registered lot.

9                   So what the applicant has proposed  
10                  to do is to basically make an enclosure 20  
11                  feet wide by eight feet deep that backs up to  
12                  the side of the building at the easterly edge.  
13                  And in there he will two dumpsters and two  
14                  recycling containers. The wall is six feet  
15                  high. It's a concrete masonry unit wall on  
16                  the two ends and then he's got a chain link  
17                  gate with integral opaque slat doors that  
18                  would screen this. And he's staggered the  
19                  blocks such that there are openings within the  
20                  block wall. And as the applicant stated  
21                  before, that was at the request of the  
22                  residential neighbors behind the building,

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1 that yes, they wanted it screened and he is in  
2 compliance with the regs for screening it.  
3 But they were afraid of anything going on, so  
4 they wanted at least some kind of a porous  
5 opening in it that allow them to see if any  
6 devious deeds were being done behind these  
7 screened enclosures.

8 As part of this, which was not  
9 originally related to the applicant per se,  
10 there is also a trash compactor which is  
11 adjacent to this site. And what the neighbors  
12 have asked again that he could screen this,  
13 but he's putting up a fence, a PVC fence six  
14 feet high and he's proposing to put opaque  
15 slats within the walls on this fence. And  
16 again, it's a lattice-type opening because the  
17 neighbors, they want it screened, but they  
18 still want to be able to know if there's  
19 anything going on, gangs or whatever gathering  
20 behind there.

21 I'm a little sensitive about this.  
22 This is one of those situations where as you

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1 get into this and he looks at it, you start  
2 picking up some non-compliance issues that he  
3 as with the site related to this. And I would  
4 agree that putting a brick wall all the way  
5 down the site would be a bit of a burden for  
6 him to have to do this.

7 The vinyl fence, I would be okay  
8 with. I'm just concerned about the long range  
9 maintenance issues of it. And I think that  
10 has to be something that has to be addressed  
11 that he has to be able to maintain this. And  
12 I think that ought to be written in our record  
13 for this.

14 For the rest of the parking lot,  
15 and it was Mr. Dettman I believe that brought  
16 it up in the hearing that pointed out that in  
17 a situation like this for a C-2-A abutting a  
18 residential district that the parking area has  
19 to be screened with vegetation or a wall.  
20 Five percent I believe is what the regs are  
21 citing. The applicant has come back with a  
22 site plan that shows six Leyland cypresses

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1 going down the alley. And he's got on the two  
2 little islands on 35th Street with Bradford  
3 pears. At the other end of the site on Lot  
4 804 where there's another parking area, and  
5 Lot 804 is an adjoining property which he also  
6 owns; it's additional parking for this  
7 complex, he has put four Leyland cypress on a  
8 parkway area to help screen that from the  
9 residential area.

10 I'm not opposed to this. I would  
11 vote in favor of the special exception. I'm  
12 just a little bit concerned about the  
13 selection of the Bradford pears. I think only  
14 from the standpoint that they're not a long-  
15 life tree. If you get 12 years out of them  
16 before the joint starts to break, you're going  
17 to have issues with Bradford pears. I would  
18 prefer a more substantial tree that is better  
19 in the urban environment a little bit more  
20 long lasting. But that's a minor issue in one  
21 sense. I think obviously if he puts in the  
22 Bradford pears, he's going to have to replace

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1       them once something goes wrong with them.

2                       This is also one we don't have a  
3       report from the ANC, which is ANC 7A. We do  
4       have a petition, which was Exhibit 32, which  
5       had 265 signatures on it of people in favor of  
6       this and there was only one letter of one  
7       person opposed to this.

8                       But I think he's met the intent of  
9       the special exception of what he has to meet  
10      to be able to get this and I would vote in  
11      favor of this.

12                      CHAIRPERSON LOUD: Mr. Turnbull,  
13      what are you thoughts on the variance relief  
14      on the request? Do you believe that the  
15      evidence supports that as well as the special  
16      exception?

17                      COMMISSIONER TURNBULL: Well, yes,  
18      again, the main thrust of this will be around  
19      the dumpsters. If I look at just the dumpster  
20      issue itself, we're calling for a brick  
21      enclosure. He's used concrete masonry units,  
22      which would be acceptable. My recommendation

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1 is that they would be painted the same color  
2 as the wall that it's going to be up against  
3 on the side of the building, to blend it in  
4 more. You know, normally we don't get the  
5 openings in a wall like this. It's usually a  
6 solid brick wall. But as the applicant has  
7 stated the residential neighbors would prefer  
8 openings within the wall so it's not an area  
9 that something could go on, a rape or gang  
10 meetings, or whatever.

11 So I think he's addressed the  
12 concerns of the neighbors. I'm not opposed to  
13 that. I think in one way, I mean, a solid  
14 enclosure has more benefits to keeping things  
15 totally secluded. But I think he's met the  
16 intent of doing that. It is a solid  
17 container.

18 And he's gone one step further.  
19 Again, because of the unique situation here  
20 where you have more than one tenant, he's not  
21 just building an enclosure for the one trash  
22 container, he's doing it for all of the

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1       dumpsters and some recycling bins. So he's  
2       trying to take an extra step further and put  
3       everything into one enclosure.

4                       So, yes, I think he's met the  
5       variance test on that.

6                       CHAIRPERSON LOUD: Thank you.

7                       Mr. Dettman, did you have anything  
8       to add?

9                       VICE-CHAIRPERSON DETTMAN: No.

10                      CHAIRPERSON LOUD: Thank you. I  
11       agree with you, Mr. Turnbull, and want to  
12       thank you. That was an excellent recitation  
13       of the evidence in the case before us.

14                      Let me see if I have anything to  
15       add, which if I do, it will be very brief.

16                      We talked about the exceptional  
17       circumstance being essentially a 20-foot wide  
18       food delivery service on a site that has  
19       multiple uses already. So it would be  
20       practically difficult for this particular  
21       applicant; there was testimony to that effect,  
22       to provide this, I think it would boil down to

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1 about 210 feet of lot line brick enclosure  
2 when he only takes up about 20 feet of what is  
3 the rear lot. So I think you covered that  
4 very well.

5 There's no substantial detriment  
6 to the public good.

7 I did want to acknowledge the  
8 letter of Ms. Dutch, which is at our Exhibit  
9 33, just to take note of her opposition to it,  
10 but on whole, on balance, there's an Exhibit  
11 32 which has, as you mentioned, 265 petitioned  
12 letter signed of support. So when you weigh  
13 the balance, I think that Exhibit 32 suggests  
14 that there is no detriment to the public good.

15 We did not get an ANC report to  
16 give great weight to, although in the case the  
17 Office of Planning represented that the ANC  
18 had a particular position relative to some  
19 non-zoning issues. But in terms of what we  
20 deliberate on, it was not part of our record.  
21 So it doesn't factor into the public detriment  
22 discussion. And there's no evidence of any

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1 substantial impairment to the zone plan. In  
2 fact, the regs contemplate under 734 that you  
3 can do a food service delivery by special  
4 exception.

5 So I think that we are probably  
6 ready to vote on this. I'm wondering if we  
7 might want to word some conditions so that we  
8 have it all before us as we vote.

9 COMMISSIONER TURNBULL: Well, I  
10 guess the one condition I would have, and I  
11 guess this is just for trying to -- I guess I  
12 would have that enclosure painted the same  
13 color as the wall that it's adjacent to so  
14 that it blends in more, that it doesn't stick  
15 out. I don't know how you would do it on the  
16 fence. I mean, it's just a general concern of  
17 to keep that fence maintained because it's  
18 PVC. I'm worried about warping in the short  
19 run. In the long run, it's not as substantial  
20 as a one-foot thick, you know, six-foot high  
21 brick wall, but as the applicant testified  
22 also that he felt that that would be very

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1 difficult for him to build, dealing with the  
2 condition of the curb along the side of the  
3 alley and where the compactor is.

4 I'm not sure how you would you  
5 want to word that about just our concerns  
6 about maintenance issues. I mean, it's one of  
7 those things that you just have to do as part  
8 of your own building maintenance. But I think  
9 it's something he's got to pay attention to  
10 because it's on an alley. It's subject to our  
11 winters and summers and I'm just not sure how  
12 the vinyl is going to hold up out there.

13 CHAIRPERSON LOUD: Okay. Why  
14 don't we do this? Let's try to frame two  
15 quick conditions and then put it before us for  
16 a vote.

17 The first condition would be that  
18 the dumpster enclosure be painted the same  
19 color as the side of the building to make it  
20 blend in more.

21 COMMISSIONER TURNBULL: Right.

22 CHAIRPERSON LOUD: Okay. And I

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1 think wordsmithing with the final order can  
2 refine that, but that's the general thought,  
3 that that would be one of the conditions.

4           The second condition would be that  
5 while we agree that the variance test has been  
6 met, we're authorized under section 734.9 to  
7 mitigate potential impacts. And I think that  
8 relates to your point about the fence being  
9 maintained. So if we were to say that the  
10 second condition is that the fence, the trash  
11 compactor screening fence in the rear of the  
12 property on the lot line would be regularly  
13 maintained by the applicant to keep it in a  
14 safe and attractive condition. And reasonable  
15 minds can discern what that means over time.

16           COMMISSIONER TURNBULL: Right.

17           CHAIRPERSON LOUD: And the  
18 appropriate entities can enforce that.

19           COMMISSIONER TURNBULL: Yes, I  
20 think that sounds good.

21           CHAIRPERSON LOUD: Okay. So,  
22 would you like to --

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1                   COMMISSIONER TURNBULL: Yes. The  
2                   only other thing is, I mean, if he wants to  
3                   put in the Bradford pears, I guess he's going  
4                   to put them in. I think it's just in the long  
5                   run not the best tree to have out there. For  
6                   his benefit I think he ought to think of  
7                   another tree that might be more substantial  
8                   and long lived. But I don't know if we need  
9                   to put that in or not, but it's his choice.  
10                  It's just his own problems later on.

11                  But I could make a motion, if you  
12                  want.

13                  CHAIRPERSON LOUD: Why don't you  
14                  go ahead and make the motion?

15                  COMMISSIONER TURNBULL: Mr. Chair,  
16                  I would like to move that we approve the  
17                  application of East Capitol LLC, 3548 East  
18                  Capitol Street, Square 5047, Lot 801 to allow  
19                  for a fast food carry out service under  
20                  section 734 and the variances from the  
21                  requirement for a brick wall along the alley  
22                  lot line and for the dumpster under subsection

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1 734.4 and 734.4, and move approval.

2 CHAIRPERSON LOUD: And I'm  
3 assuming, and you probably said and I just  
4 didn't hear it, as conditioned?

5 COMMISSIONER TURNBULL: As  
6 conditioned, right.

7 CHAIRPERSON LOUD: And is there a  
8 second on the motion?

9 VICE-CHAIRPERSON DETTMAN: Second.

10 CHAIRPERSON LOUD: Okay. So a  
11 motion for application No. 17901 has been made  
12 by Mr. Turnbull, as conditioned. Seconded by  
13 Mr. Dettman.

14 All those in favor, say aye.

15 (Chorus of ayes.)

16 CHAIRPERSON LOUD: All those  
17 opposed say nay.

18 All those in abstention?

19 The ayes have it.

20 Can you read back the vote, Mr.  
21 Moy?

22 MR. MOY: Yes, Mr. Chairman.

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1 Staff would record the vote as 3-0-2. This is  
2 on the motion of Mr. Turnbull to approve the  
3 application as conditioned, seconded by Mr.  
4 Dettman. Also in support of the motion, Mr.  
5 Loud. And we have two Board Members not  
6 participating. Again, the final result is 3-  
7 0-2.

8 Is the Board considering waiving  
9 the regulations for a summary order?

10 CHAIRPERSON LOUD: Considering  
11 that there is no opposition in the case,  
12 right? The ANC didn't file a report. So I  
13 think that would be appropriate.

14 What do other members think?

15 Yes, I think that's the consensus,  
16 Mr. Moy.

17 MR. MOY: All right. Very good.

18 CHAIRPERSON LOUD: Are there any  
19 more matters for public meeting this morning?

20 MR. MOY: No, sir. That concludes  
21 the special public meeting.

22 CHAIRPERSON LOUD: All right. Do

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1 I need to officially adjourn the public  
2 meeting?

3 MR. MOY: Yes, sir.

4 CHAIRPERSON LOUD: It is  
5 officially adjourned.

6 (Whereupon, the meeting was  
7 adjourned at 10:03 a.m.)

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