

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY  
SEPTEMBER 22, 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, 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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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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