

**Minutes for the Meeting of
Advisory Neighborhood Commission 2E**

January 11, 2010
Georgetown Visitation School, 35th and Volta Place, Heritage Room

The meeting was called to order at 6:35 p.m. by Commissioner Lewis, Chair, with Commissioners Solomon, Lewis, Golds, Starrels, Birch and Eason present, constituting a quorum.

Administrative

ANC Officers for 2010

Commissioner Solomon moved that the Officers for 2009 remain in their positions for 2010 (Commissioner Lewis as Chair, Commissioner Starrels as Vice-Chair, Commissioner Golds as Secretary and Commissioner Solomon as Treasurer). This motion was seconded by Commissioner Birch and passed by a vote of 6-0.

ANC Committees for 2010

Commissioner Lewis made the following motion relating to committee and other designations for the year 2010 (Commissioner Eason seconded), which passed by a vote of 6-0:

Commissioner Bill Starrels to be the ANC2E-designated nonvoting member of the board of the directors of the Georgetown Business Improvement District;

Commissioners Charles Eason and Tom Birch to be Liaison to Tudor Place;

Commissioners Bill Starrels and Tom Birch to co-chair the ABC (Alcoholic Beverage Control) Committee;

Commissioner Ed Solomon to chair the Public Safety Committee;

Commissioners Tom Birch and Bill Skelsey to co-chair the Historic Preservation Committee;

Commissioners Bill Starrels and Ron Lewis to co-chair the Transportation Committee;

Commissioner Charles Eason to chair the Public Works and WASA Committee;

Commissioners Aaron Golds, Bill Skelsey, Ron Lewis and Ed Solomon to co-chair the Community and University Relations Committee;

Commissioners Bill Skelsey and Charles Eason to chair the Schools and Library Committee;

All Commissioners for Advisory Neighborhood Commission 2E are members of the Committee of the Whole with Ron Lewis as Chairman.

Public Safety and Police Report

Lieutenant Hedgecock reported on public safety matters and recent crimes in the community, noting that BID is paying for overtime officers on weekends in the business district with good result, also Georgetown University and CAG pay for overtime officers during the weekend in the residential area. Lieutenant Hedgecock and Commissioner Solomon responded to questions from Commissioners and community members, including a report on a recent “Cuddler” incident in Glover Park; a recent fire and found body near Rock Creek Park; and the tow truck problem at the gas station on M Street, NW, across from the Four Seasons.

Approval of December Meeting Minutes

The minutes for the meeting of ANC 2E held on November 30, 2009 were approved on a motion by Commissioner Eason (Commissioner Solomon seconded) by a vote of 6-0.

Financial Report—Approval of 1st Quarter Financial Report

Commissioner Solomon reported on ANC 2E’s finances.

ANC 2E’s First Quarter Financial Report was approved on a motion by Commissioner Eason (Commissioner Birch seconded) by a vote of 5-0.

Transportation Report

Commissioners Starrels and Lewis reported on transportation matters in the community. Francisco Fimbres from the Mayor’s Office of Community Relations and Services reported on the massive snow-removal effort last month (\$4 million, little money left for rest of winter). The upcoming improvements will include better maps and a stronger focus on side streets. Mr. Fimbres also responded to questions from the Commissioners and community members on ways to improve the snow-removal process and focus on the residential streets in Georgetown.

2010 ANC Security Fund

The following resolution authorizing ANC 2E to participate in the Security Fund the District of Columbia provides for ANC’s for the year 2010 was made by Commissioner Eason (Commissioner Lewis seconded) and passed by a vote of 5-0:

Resolved, that this Commission approves the ANC’s participation in the Advisory Neighborhood Commission Security Fund and authorizes the Treasurer to pay the \$25 fee for the period January 1, 2010 through December 31, 2010. The Chair and Secretary are authorized to execute the requisite agreement.

It is understood that (1) the check for participation in the ANC Security Fund should be made payable to “ANC Security Fund,” (2) the ANC is not considered a participant in the

Fund until the ANC has received the acceptance notice of the agreement which has been signed by the District of Columbia Auditor, and (3) the agreement will not be accepted by the Auditor until all required documents have been received by the Office of the Auditor. The required documents are: Resolution; Agreement; ANC Check; Statement of Information – Chairperson; Statement of Information –Treasurer; Bank Survey; and Copy of Current Bank Signature Card.

Community Comment

Safeway Update

Craig Muckle from Safeway updated the community on the grocery store's construction progress, noting they expect a May opening. He spoke about the plans to sell beer and wine in the new store, noting the expanded wine selection. Safeway will return to discuss further the changes in alcohol policy, including a possible request for a change to their voluntary agreement. Mr. Muckle answered questions regarding the first-floor retail space and the alcohol policy.

New Business

M Street, NW, Fire Station – plans for covering our area during construction and beyond

Representatives from the DCFEMS presented their plans to cover adequately Georgetown during the construction of a new fire station at 23rd and M Streets, N.W. They assured the community that during renovation and updating, a temporary station would be established in the immediate area. After discussion by Commissioners and community members, Commissioner Birch made the following motion (Commissioner Golds seconded), which passed by a vote of 6-0:

The location of the fire station at 2225 M Street, NW is well positioned to provide essential fire and emergency protection to Georgetown. Its continued operation is critical to the protection and safety of the community. All of us who live and work in Georgetown depend upon the high level of service offered by the location of Engine 1.

ANC 2E insists that the level of service from fire, ambulance and paramedics available from Engine 1 not be interrupted or compromised, regardless of what plans are finally approved for renovation of the fire station and development of the property at 2225 M Street, NW.

3330-3332 Dent Place, NW - Cultural Tourism DC – African American Heritage Trail Plaque for Yarrow Mamout

A representative (Sarah Fairweather) from Cultural Tourism DC presented plans to create an African-American Heritage Trail in DC, including the placement of plaques in Georgetown. The matter was discussed by the Commission, but no resolution was voted on at this meeting.

George Town Club Valet Parking Program

DDOT provisionally approved nighttime valet parking, but not daytime valet parking, and Commissioner Solomon, the George Town Club and the neighbors have together worked

through many issues with the valet parking operation. After discussion by Commissioners and community members, Commissioner Solomon made the following motion (Commissioner Lewis seconded), which passed by a vote of 6-0:

The George Town Club provides valet parking for its customers on Wisconsin Avenue, NW. The Volta Place residents have identified two (2) areas of concern which pose a safety risk to the community.

1) The line of cars waiting for valet service can block the crosswalk, preventing safe pedestrian travel.

2) This line-up also blocks the flow of traffic onto Volta Place, preventing emergency vehicles from entering the street.

In a meeting on January 6, 2010 held at the George Town Club, it was agreed by Mr. Barnes that the Volta Place residents would not object to a lunch and dinner valet parking program provided that the George Town Club provide adequate personnel to manage and address the safety concerns.

ANC 2E supports the residents and will evaluate the George Town Club valet parking program in three (3) months of its effectiveness.

ANC 2E requests that the Public Space Committee reverse its decision for a loading zone on Wisconsin Avenue, NW between P Street and Volta Place. The neighbors object to the establishment of a loading zone at this location, particularly because the George Town Club has not requested the loading zone and has no objection to its removal.

1812 35th Street, NW—Construction Issues

Commissioner Solomon discussed the history of issues with the construction taking place at this location. After discussion by Commissioners and community members, Commissioner Solomon made the following motion (Commissioner Eason seconded), which passed by a vote of 5-0 (Commissioner Golds abstained):

WHEREAS, the Zoning Administrator of the Department of Consumer and Regulatory Affairs (“DCRA”) with respect to construction at 1812 35th Street, NW, Washington, DC 20007 (the “Property”), announced in a letter dated December 10, 2009, that DCRA will not enforce the zoning laws and regulations of the District of Columbia (the “DCRA Decision”); and,

WHEREAS, the DCRA Decision is inconsistent with three written decisions and orders of the District of Columbia’s Board of Zoning Adjustment (“BZA”) regarding the Property; and,

WHEREAS, those BZA decisions are Appeal No. 17519, decided November 14, 2006, Application No. 17327, decided January 28, 2005, and Appeal No. 17310, decided November 8, 2005; and,

WHEREAS, Advisory Neighborhood Commission 2E (“ANC 2E,” or “the Commission”) asks the District of Columbia to enforce its zoning laws and regulations with respect to the Property; and,

WHEREAS, in the DCRA Decision, the Zoning Administrator concluded that DCRA would “not take enforcement action with respect to this construction;” and,

WHEREAS, the Property as currently constructed exceeds the permissible lot occupancy for its zoning district; and,

WHEREAS, the current situation, if unresolved, would have a negative impact on the community; and,

WHEREAS, ANC 2E Commissioner Eason sent via e-mail on January 8, 2010 a request that the Zoning Administrator reconsider the position described in his letter of December 10, 2009; and

WHEREAS, ANC 2E requests the DCRA give the “great weight” entitled to this resolution by law;

Therefore, it is

RESOLVED, that ANC 2E adopts the request for reconsideration, having been filed by its authorized representatives, and urges the Zoning Administrator to reverse his position and to enforce the zoning laws as they have been interpreted by the BZA.

Public Space

2900 K Street, NW, Flagpole for the Embassy of Liechtenstein, Public Space Permit

Representatives for the Embassy of Liechtenstein presented plans and requested support for a public-space permit to build a flagpole on public space near the building in which the Embassy is located. After discussion by Commissioners and community members, Commissioner Starrels made the following motion (Commissioner Birch seconded), which passed by a vote of 6-0:

ANC 2E supports the placement of the flagpole for the embassy of the country of Liechtenstein at its proposed location and has no objections.

Zoning and Planning

3139 N Street, NW, application for a variance from the use provisions to continue the use of four unit apartment house

Representatives from the property presented plans to continue to use the property as an apartment house. After discussion by Commissioners and community members, Commissioner Birch made the following motion (Commissioner Eason seconded), which passed by a vote of 6-0:

Given that the property at 3139 N Street, NW has existed as an apartment house for at least 46 years without detriment to the public good or the character of the adjacent area, in support of the applicant's attention to take corrective action to recognize the long-established use of the property, its acceptance in the neighborhood as an apartment house, in consideration of its location abutting a commercial zone, and considering that no neighbors have objected, ANC 2E has no objection to the application for a variance at 3139 N Street, NW to continue its use as a four-unit apartment house.

Philly Pizza—1211 Potomac Street, NW—Zoning Administrator's determination re: restaurant vs. fast food establishment; Upcoming BZA hearing

The upcoming BZA hearing regarding this establishment was discussed by Commissioners and community members, Commissioner Starrels made the following motion (Commissioner Birch seconded), which passed by a vote of 5-1 (Commissioner Golds dissenting):

WHEREAS, at its regularly scheduled meeting on January 11, 2010 (this "Meeting"), ANC 2E considered Board of Zoning Adjustment ("BZA") Appeal No. 18027 (the "Appeal") of Mehmet Kocak and Philly Pizza and Grill, Inc. ("Philly Pizza" or the "Appellant"), which is an appeal of a decision by the Zoning Administrator to revoke Certificate of Occupancy No. 0800124 and Certificate of Occupancy No. 0903354, both issued for "restaurant" use at 1211 Potomac Street, N.W. in the C-2-A zone district;

WHEREAS, proper notice of the January 11, 2010 Meeting was given;

WHEREAS, the number of members that constitute a quorum for ANC 2E is four (4), and there were six (6) ANC 2E members present at this Meeting;

WHEREAS, ANC 2E understands that the primary issue in the Appeal is whether or not the Zoning Administrator erred in revoking the Certificates of Occupancy of Philly Pizza pursuant to 12 DCMR 110.5.1, which provides that "[a]ny certificate of occupancy previously issued or issued pursuant to Section 110 shall be revoked by the code official, after notice, if the actual occupancy does not conform with that permitted.";

WHEREAS, the Appellant has represented in its Pre-hearing Statement filed with the BZA on December 29, 2009 (the "Pre-hearing Statement") that only 45.41% of its business represents the preparation and sale of food for consumption on the premises, and, conversely, that approximately 54.59% of its business represents the preparation and sale of food for consumption off the premises, which is divided between carryout and delivery use;

WHEREAS, according to reliable information communicated to the full ANC from Bill Starrels, the Single Member District Representative for the subject area, from DCRA, and from neighbors that live adjacent to Philly Pizza, it is unmistakably obvious to ANC 2E that the majority of Philly Pizza's business is for carryout and delivery, or "off premises" consumption, and it is unmistakably obvious to ANC 2E that the carryout business is not clearly subordinate to a principal restaurant use;

WHEREAS, in the Zoning Regulations, a restaurant is defined as “a place of business...where food, drinks, or refreshments are prepared and sold to customers primarily for consumption on the premises.” [Emphasis added];

WHEREAS, since Philly Pizza does not prepare and sell food primarily for consumption on the premises, it is not a restaurant, as such term is defined in the Zoning Regulations;

WHEREAS, since Philly Pizza’s actual use does not conform with the “restaurant” use permitted in its Certificate of Occupancy, the Zoning Administrator was acting correctly in revoking such Certificate of Occupancy, and Appeal No. 18027 should be denied;

WHEREAS, the ANC Single Member District Representative for the subject area, Bill Starrels, submitted a letter to the Board of Zoning Adjustment dated November 12, 2009, in which he urged the Board of Zoning Adjustment to deny the Appeal, and expressed in clear and comprehensive detail the reasons why the Board should take such action, including the detrimental effect of the Appellant’s unlawful operations on the surrounding neighborhood;

WHEREAS, ANC 2E agrees entirely with the content of the November 12, 2009, letter from Bill Starrels, and wishes to adopt this letter and incorporate it into this Resolution; and

WHEREAS, for various reasons, including the fact that the Appellant has presented new information in its Pre-hearing Statement, and this Meeting is the first scheduled meeting after such filing, the ANC shall request of the BZA that it waive the requirement under Section 3115 of the Zoning Regulations to file this Resolution at least seven (7) days before the hearing, which is scheduled for tomorrow, January 12, 2010;

Therefore, it is

RESOLVED, that ANC 2E recommends to the Board of Zoning Adjustment that Appeal No. 18027 be denied, and that DCRA proceed immediately in revoking the Certificate of Occupancy and ceasing Philly Pizza’s unlawful use; and it is

FURTHER RESOLVED, that ANC 2E hereby adopts, in its entirety, Bill Starrels’s November 12, 2009 letter (attached as Exhibit A hereto), and incorporates that letter into this Resolution; and it is

FURTHER RESOLVED, that ANC 2E respectfully requests, for the reasons provided herein, that the Board of Zoning Adjustment waive the seven (7) day filing requirement under Section 3115 of the Zoning Regulations and accept this Resolution into the record as if timely filed and afford ANC 2E’s position the “great weight” to which it is entitled; and it is

FURTHER RESOLVED, that ANC 2E Commissioners Lewis, Starrels, Solomon, Eason and Birch, or any one or more of them, are authorized to present this Resolution in person at the BZA hearing.

Commissioner Starrels made the following resolution authorizing ANC 2E to use Attorney Martin P. Sullivan in the case that the neighbors of the establishment are denied party status (Commissioner Solomon seconded), which passed by a vote of 5-1 (Commissioner Golds dissenting):

WHEREAS, at its regularly scheduled meeting on January 11, 2010 (this "Meeting"), ANC 2E considered Board of Zoning Adjustment ("BZA") Appeal No. 18027 (the "Appeal") of Mehmet Kocak and Philly Pizza and Grill, Inc. ("Philly Pizza" or the "Appellant"), which is an appeal of a decision by the Zoning Administrator to revoke Certificate of Occupancy No. 0800124 and Certificate of Occupancy No. 0903354, both issued for "restaurant" use at 1211 Potomac Avenue, N.W. in the C-2-A zone district;

WHEREAS, the proper notice of the January 11, 2010 Meeting was given;

WHEREAS, the number of members that constitute a quorum for ANC 2E is four (4), and there were six (6) ANC 2E members present at this Meeting;

WHEREAS, at the Meeting, immediately prior to considering this Resolution, ANC 2E approved a resolution recommending that the BZA deny the Appeal;

WHEREAS, certain residents of ANC 2E-05, residing on Potomac Street adjacent to Philly Pizza (the "Potomac Street Residents"), are attempting intervene in the Appeal, have hired land use attorney Martin P. Sullivan to represent them in opposing the Appeal, and have authorized Mr. Sullivan to so represent them before the BZA at the hearing on January 12, 2010;

WHEREAS, if the Potomac Street Residents are denied intervenor status, ANC 2E would like to prosecute this Appeal fully, including presenting the Potomac Street Residents and others as witnesses in ANC 2E's case;

WHEREAS, ANC 2E therefore wishes to authorize Mr. Sullivan to represent ANC 2E in the Appeal, in order to provide for the situation in which the Potomac Street Residents are denied intervenor status and ANC 2E is forced to fully prosecute the Appeal on behalf of the Potomac Street Residents as well as on behalf of ANC 2E;

Therefore, it is

RESOLVED, that ANC 2E authorizes Martin P. Sullivan to represent ANC 2E, with the power to bind ANC 2E, at the hearing on Appeal No. 18027 before the Board of Zoning Adjustment on January 12, 2010.

Commissioner Lewis proposed the following amendment to the first resolution dealing with this establishment above, to request that the neighbors are given party status during the BZA hearing (Commissioner Birch seconded) which passed by a vote of 5-1 (Commissioner Golds dissenting):

FURTHER RESOLVED, that ANC 2E respectfully requests that the Board of Zoning Adjustment grant the Motion for Leave to Intervene by Ms. Lynn Schubert, Ms. Anne Alonzo and Mr. Alex Meerous, who are neighbors living in close proximity to the subject property;

At 8:15 p.m., with no further matters on the agenda, Commissioner Starrels moved (Commissioner Lewis seconded) to adjourn this public session of ANC 2E. The motion passed unanimously.

Submitted for the approval of ANC 2E,

Aaron Golds
Secretary, ANC 2E