

## **SUBWAY ON BALTIMORE AVENUE**

**Zoning Issue Involved---** **Certificate** for Take Out. The property in question, 4533 Baltimore Avenue, is currently zoned C2, so a food operation on the Subway model is permitted as a matter of right. The question before the Spruce Hill Community Association zoning committee is simply whether Subway should be granted a certificate for take out at a location that is properly zoned for such an operation. Normally, “take out certificates” are granted routinely, some even over the counter at Licenses & Inspections. We can find no instance in which Spruce Hill opposed granting a take out certificate to any legitimate business free of a negative reputation for shoddy practices. The fact that Subway is a corporate chain of considerable size does not act as a disqualifier.

**Community concerns----**They are many and varied. Spruce Hill takes seriously the views expressed by some neighbors, residents and business owners along Baltimore Avenue that allowing big market operators to set up shop on the avenue will alter the character of the neighborhood and, possibly, diminishes the earning capacity of the smaller businesses that have been the engine for the avenue’s revitalization. We appreciate as well the sentiments expressed by others that a corporate operator moving into a vacant storefront brings a level of economic stability that could have a positive impact for other area businesses. Others criticized the “culinary quality” of Subway offerings while offering heartfelt expressions of support for the existing businesses along Baltimore Avenue with pleas that Spruce Hill prohibits any competing operations lest they impact them negatively. The public, not Spruce Hill or any other community entity has the capacity through its purchasing power to determine the level of support for any area business, and that is as it should be. The Subway application, if nothing else, has managed to generate a heated yet civil discussion about how people see the avenue and what they envision for its future. Such a discussion is healthy, appropriate and timely—perhaps even overdue. Members of the Spruce Hill zoning committee share many of the above concerns; nevertheless, the committee must deal with the application before it and not one that it wished it had.

**Zoning Committee position----**The committee has no legitimate grounds to oppose this application. Subway is a recognized operator with an acceptable track record. Spruce Hill has no authority to declare a corporate operator off limits no matter the feelings of individual committee members. There is no stated policy about chain operators on Spruce Hill’s commercial corridors. The association has no stated policy, neighbors’ views vary, and short of a zoning overlay or some other prohibitive policy arrived at in a way that insures community consensus, the Spruce Hill zoning committee has no standing to declare a policy for the neighborhood at large. It is critical to keep in mind the zoning issue at stake here—simply a certificate for take out. Were Spruce Hill to oppose this application on the grounds that the association opposes chain operators on Baltimore Avenue we would, in effect, be declaring a neighborhood policy that DOES NOT EXIST and face likely dismissal by the city’s Zoning Board for a position that has no legal standing.

**Zoning Committee action**-----The only leverage any community has in zoning exists prior to a scheduled hearing before the ZBA. Given the heartfelt opposition by many in the neighborhood, the convenient position on the part of the committee would be to oppose granting of the certificate, curry favor with opponents of Subway for standing with area opponents, and lose any ability to impact Subway's operation. In truth, there is limited leverage when the issue at hand is a certificate for take out, but we work with what we have. Our responsibility as zoning committee members is a basic one---get the best deal possible to serve the long term interests of the community on an avenue property more often vacant than not that is legally zoned for occupancy by the applicant before us. To that end, we produced a list of concerns based on verbal and written comments by neighbors for Subway to address before receiving a letter of "non-opposition" from Spruce Hill. A proviso now attached to the applicant file incorporates much of what we sought, and the applicant's attorney will ask the 'Zoning Board of Adjustment to make it an official part of any decision. The proviso recognizes the deed restriction on use of the alley immediately to the west, and deals with neighborhood and community concerns regarding exterior lighting, painting and general aesthetics. It covers handling and removal of trash, restaurant deliveries, and hours of operation, as well as Subway's involvement with BABA and activities on the avenue. The proviso is attached as an additional document.

We know that this decision, and the attached proviso, will not satisfy everyone. However, we hope that this episode will spur greater involvement by area merchants in discussing what they would like to see as Baltimore Avenue's future. It is a discussion that Spruce Hill stands ready to join and no doubt other neighboring community associations do as well.

Barry Grossbach, Chair  
Spruce Hill Zoning Committee

Members Participating in this Decision:

Robert Behr  
Jack Barrett  
Janet Finin  
Justin Kaplan  
Richard King  
Justin Kaplan  
Andy Lochrie