

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19200-A of Jemal’s Pappas Tomato’s L.L.C., Motion for Modification of Consequence, pursuant to 11 DCMR Subtitle Y § 703.

The original application (No. 19200) was pursuant to 11 DCMR § 3103.2¹, for a variance from the off-street parking requirements under § 2101.1, to allow the adaptive reuse of an existing warehouse building for retail uses in the C-M-1 District at premises 1401 Okie Street N.E. (Square 4093, Lot 832).

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| HEARING DATE (Case No. 19200): | March 1, 2016 |
| DECISION DATE (Case No. 19200): | March 1, 2016 |
| FINAL ORDER ISSUANCE DATE (Case No. 19200): | March 3, 2016 |
| MODIFICATION DECISION DATE: | September 27, 2016 and October 18, 2016 |

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On March 1, 2016, in Application No. 19200, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Jemal’s Pappas Tomato’s L.L.C (the “Applicant”) for a variance from the off-street parking requirements under § 2101.1, to allow the adaptive reuse of an existing warehouse building for retail uses in the C-M-1 District at premises 1401 Okie Street N.E. (Square 4093, Lot 832). The Board issued Order No. 19200 on March 3, 2016. (Exhibit 5 of the record for Case No. 19200A.) The Order in Case No. 19200 was conditioned on the Applicant, pending the approval of the Public Space Committee, installing curb ramps on the east-side of Fenwick Street at the intersection of Gallaudet Street as part of streetscape improvements, which will be coordinated through public space permits.

MOTION FOR MODIFICATION OF CONSEQUENCE

¹ The original application was filed under the Zoning Regulations (Title 11, DCMR) which were then in effect (the “1958 Zoning Regulations”) but which were repealed on September 6, 2016 and replaced with new text of Title 11, DCMR (the “2016 Regulations”).

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On September 14, 2016, the Applicant submitted a request for modification of consequence to the plans approved by the Board in Order No. 19200. (Exhibit 1.) Pursuant to 11 DCMR Subtitle Y § 703, the Applicant requested to redesign the architectural elements from the approved plans of Order No. 19200.

Under § 2101.1 of the 1958 Zoning Regulations, a total of 223 onsite parking spaces were required for the proposed retail and manufacturing uses. The Board granted a variance from § 2101.1 to allow the Applicant to provide zero parking spaces on the Site, based largely on the fact that the Applicant's development company (Douglas Development Corporation) had already constructed a seven-story above-ground parking garage across the street from the Site. The parking garage contains over 1,000 parking spaces and was built to accommodate future development at the Site.

The approved plans structurally preserved the existing building and included a number of renovations that resulted in approximately 54,521 square feet of gross floor area (0.69 FAR) and approximately 55,857 square feet of cellar floor area. The maximum building height was maintained at 35 feet and two stories. The renovated building complied with all applicable Zoning Regulations, except for parking.

In the application herein, the Applicant requests a Modification of Consequence to redesign the architectural elements from the final design approved by the Board in Case No. 19200. Specifically, the Applicant proposes to add a new third-story addition to a portion of the west side of the building, and to reconfigure the uses within the building to incorporate office use. These changes result in relocated core elements, shifted penthouses at the roof levels, reconfigured partitions within the retail space to accommodate the office use, and reconfigured loading facilities. The revised building will have approximately 73,244 square feet of gross floor area (0.93 FAR) and approximately 51,582 square feet of cellar floor area. The maximum building height will be increased to 40 feet.

Pursuant to Subtitle C § 700, the revised plans generate a total parking requirement that represents a significant reduction from the 223 parking spaces required under the 1958 Zoning Regulations, in part because the parking requirement for retail use was reduced significantly in the 2016 Regulations. The building height, density, setbacks, loading, and penthouses all comply with 2016 Regulations, such that no additional areas of zoning relief are generated by the revised plans. (Exhibit 3.)

The Applicant submitted revised plans reflecting these modifications. (Exhibit 6.)

The Applicant indicated that the proposed modification of consequence does not required additional relief from the Zoning Regulations. Further, the Applicant does not seek to modify the conditions of approval included in BZA Order No. 19200.

The Merits of the Request for Modification of Consequence

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The Applicant's request complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a "proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board."

Pursuant to Subtitle Y §§ 703.8-703.9, the request for modification of consequence shall be served on all other parties to the original application and those parties are allowed to submit comments within ten days after the request has been filed with the Office of Zoning and served on all parties. The Applicant provided proper and timely notice of the request for modification of consequence to Advisory Neighborhood Commission ("ANC") 5D, the only other party to Application No. 19200, as well the ANC Commissioner for Single Member District 5D01. ANC 5D submitted a report dated October 13, 2016, recommending approval of the request for modification of consequence. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 11, 2016, at which a quorum was present, the ANC voted 5-0-0 to support the request. (Exhibit 11.)

The Applicant also served its request on the Office of Planning ("OP"). OP submitted a report on October 12, 2016 recommending approval of the proposed modification of consequence to the Applicant's plans. (Exhibit 10.)

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of consequence of approved plans. Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking a modification of consequence to the plans approved in Case No. 19200, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

As noted, the only parties to the case were the ANC and the Applicant. Accordingly, a decision by the Board to grant request would not be adverse to any party and therefore an order containing full finding of facts and conclusions of law need not be issued pursuant to D.C. Official Code § 2-509(c) (2012 Repl.). Therefore, pursuant to 11 DCMR Subtitle Y § 101.9, the Board has determined to waive the requirement of 11 DCMR Subtitle Y § 604.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of significance of the Board's approval in Application No. 19200 is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED MODIFIED PLANS IN EXHIBIT 6.**

In all other respects, Order No. 19200 remains unchanged.

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VOTE ON ORIGINAL APPLICATION ON MARCH 1, 2016: 3-0-2

(Marnique Y. Heath, Frederick L. Hill, Michael G. Turnbull, to APPROVE; Jeffrey L. Hinkle, not participating or voting; one Board seat vacant.)

VOTE ON MODIFICATION OF CONSEQUENCE ON OCTOBER 18, 2016: 3-0-2

(Anita Butani D'Souza, Jeffrey L. Hinkle, and Michael G. Turnbull to APPROVE; Frederick L. Hill, not participating or voting and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: November 1, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.