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**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of
Jemal's Wonder, LLC

BZA Application No. 18380
Public Hearing: July 24, 2012
ANC 1B

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

Jemal's Wonder, LLC (the "Applicant") submits this application, pursuant to 11 DCMR § 3103.2, for a variance from the minimum off-street parking requirements under §2101.1 and for a variance from the rear yard requirements under §774.1. The Applicant also requests special exception approval, pursuant to 11 DCMR § 3104.1, for relief from the roof structure requirements, pursuant to §770.6. This relief is requested to allow the renovation and expansion of an historic landmark for mixed use retail and office uses in the ARTS/C-2-B District, at premises 641 S Street, NW (Square 441, Lot 848)(the "Property").

**II.
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment has jurisdiction to grant the requested variance and special exception relief, pursuant to §§ 3103.2 and 3104.1 of the Zoning Regulations.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18380
EXHIBIT NO. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.18380
EXHIBIT NO.26

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

Before proceeding with the discussion of the merits of the instant application, the following additional materials are submitted:

- Exhibit A: A portion of the Baist and Sanborn Atlases showing the Property outlined in red ink.
- Exhibit B: A portion of the Zoning Map showing the Property highlighted, with zoning designation of ARTS/C-2-B.
- Exhibit C: Architectural drawings and photographs of the Property.
- Exhibit D: Historic Preservation Review Board – Staff Report and Summary of Board Action, dated January 26, 2012.
- Exhibit E: Outline of testimony of Representative of the Applicant.
- Exhibit F: Professional Resume and Outline of testimony of Sacha Rosen, R2L Architects.
- Exhibit G: Professional Resume and Outline of testimony of Edward Papazian, Kimley-Horn and Associates, Inc.
- Exhibit H: Outline of testimony of Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP.

IV.
BACKGROUND OF THE CASE

A. Site and Vicinity Characteristics

1) The Property:

The Property is located in the Shaw neighborhood in Northwest Washington, fronting along the north side of S Street, NW, between 7th Street to the west and Wiltberger Street to the immediate east. The site is configured as a narrow rectangular lot with frontage along S Street totaling approximately 96 feet and

Wiltberger Street frontage measuring approximately 248 feet, with a total land area of approximately 23,381 square feet. In addition to its street frontage along Wiltberger and S Streets, the Property is bounded to its west by a fifteen-foot wide public alley and to the north by a sixteen-foot wide public alley.

The Property is improved as a complex of two masonry buildings (standing three and two stories, respectively, fronting on S Street) with multiple rear additions constructed in the early twentieth century as part of the Property's former role as the White Cross Bakery (also subsequently known as the Wonder Bread Factory). The resulting composite building footprint occupies virtually the entire footprint of the Property, as shown in the drawings attached at Exhibit C. The Property was designated an individual landmark by the District of Columbia Historic Preservation Review Board (HPRB) in November 2011 and, as such, is subject to the provisions of the District's historic preservation law with respect to any proposed alteration, demolition, subdivision or new construction impacting the Property.

The Property is zoned C-2-B and is located within the Uptown Arts (ARTS) overlay. Pursuant to §720.6 of the Zoning Regulations, the C-2-B District is designated to serve commercial and residential functions similar to the C-2-A District, but with high-density residential and mixed uses. Among the stated purposes of the ARTS overlay is the encouragement of adaptive reuse of older buildings in the area and an attractive combination of new and old buildings.

2) Square 441 and Vicinity:

The Property is located in Square 441, a comparatively large square, bounded by T Street and Florida Avenue to the north, 6th Street to the east, S Street to the South, and 7th Street to the west. Wiltberger Street, NW, runs in a north-south direction for a single block, dividing Square 441 roughly in half.

Immediately to the north of the Property is the recently renovated and reopened Howard Theatre, which fronts on the south side of T Street, NW, and opens onto Florida Avenue (Exhibit A). To the east of the Property in Square 441, construction of the mixed-use Progression Place planned unit development is nearing completion. The remainder of Square 441 is comprised of a mixture of residential and commercial uses. The Shaw/Howard University MetroRail station is located at the intersection of 7th and S Streets, one block from the Property.

B. Project Description

The Applicant proposes to renovate the complex of historic commercial buildings on the Property and to construct a creative addition above and to the rear of the buildings, to include retail on the cellar and ground levels, and office uses on the second, third and fourth levels (the "Project")(Exhibit C). The Project will measure approximately 60 feet in height, whereas up to 65 feet of height is permitted in the C-2-B Districts. The total proposed gross floor area for the Project is approximately 77,730 square feet, all of which will be devoted to retail and office use. This building rehabilitation project includes approximately 49,000 square feet of existing construction occupying virtually the entire footprint of the Property, removal of a small non-contributing building addition at the rear of the Property,

combined with a sensitive building addition measuring approximately 28,725 square feet behind and atop the existing improvements. Maximum permitted matter of right development in the C-2-B Districts is limited to a total of 3.5 FAR, with a cap of 1.5 FAR on non-residential uses. The ARTS overlay provides a combined lot development structure allowing sites within the overlay to be combined via recorded covenant for purposes of allocating permitted uses and bonus density (where applicable) between them, thereby allowing a project within the ARTS/C-2-B to be devoted exclusively for commercial uses. The Applicant is currently in discussions with a number of potential combined lot partners to relieve the Property of any obligation to construct residential density on-site.

Retail uses are proposed for the ground floor and cellar levels, with office uses on the second, third and fourth levels. The cellar level also will contain approximately 27 parking spaces, accessed by ramp from an entrance along the fifteen-foot wide alley running along the western boundary of the Property. Loading for the building will be provided on the ground floor level, with access granted from the public alley located immediate west of the Property.

The Applicant's proposed rehabilitation plans have been well received by the Historic Preservation Review Board as well as by the affected Advisory Neighborhood Commission (ANC). To that end, the HPRB granted conceptual approval to the Applicant's design program in January (Exhibit D). Likewise, the Applicant has met on various occasions with neighbors to the Property as well as with ANC 1B, which voted to unanimously support the application at its regularly scheduled meeting on June 7, 2012.

V.
**THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE
RELIEF FROM THE ZONING REGULATIONS**

The burden of proof for variance relief is well established. The Applicant must demonstrate: (a) that the Property is affected by an exceptional or extraordinary situation or condition; (b) that, as a result of said exceptional situation or condition the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant; and (c) that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the Zone Plan. *Palmer v. District of Columbia Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972). As set forth below, the Application meets this three-part test for area variance relief from the parking and rear yard requirements.

A. The Property is Affected by an Exceptional Or Extraordinary Situation or Condition

The Property is confronted with a variety of factors which qualify it for variance relief. These factors include physical conditions impacting the Property, existing improvements on the Property and the Property's designation as an individual landmark subject to the District's historic preservation law.

1. Physical Conditions and Configuration:

As a result of numerous expansions over the past several decades, the Property is currently configured as an exceptionally long and narrow rectangular corner lot

that is completely surrounded by public rights of way: S Street to the south, Wiltberger Street to the east, and public alleys to the north and west. This configuration, with exceedingly narrow rights of ways along three of four frontages of the Property, has impacted the development of the site over time and continues to impact the orientation of development.

2. Improvements on the Property:

The existing complex of multiple buildings and lower scale additions to those buildings reflect the unusual configuration of the site. Along S Street, the improvements present as two multi-story buildings (two- and three-stories, respectively). Extensions and additions made to those primary buildings have resulted in an unusual and complex compound of improvements covering the full extent of the Property, rendering the site non-conforming in certain respects under the current Zoning Regulations (rear yard and roof structures, for example). These existing improvements are also in varying states of disrepair and create certain incongruities for redevelopment (floor plate alignment, for example).

3. Historic Landmark Status:

Earlier this year, the Property was designated an individual landmark for inclusion in the District of Columbia Inventory of Historic Sites. As such, any alteration, new construction, demolition or subdivision of the Property and the existing improvements must comply with the District's historic preservation law. Given the unusual complex of buildings constituting the landmark, any significant

redevelopment of the aging facilities on the Property necessitates historic preservation review and approval.

B. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

Absent variance relief from the requested provisions of the Zoning Regulations, the Applicant will not be able to undertake the proposed rehabilitation of this celebrated but deteriorated complex of historic buildings into a vibrant mixed use retail and office project to complement other important redevelopment underway in the immediate neighborhood, in the forms of the reopening of the historic Howard Theatre to the immediate north of the site and the construction of the modern mixed-use Progression Place high-rise to the west, among others.

1. §2101.1, Parking Requirement

To the extent applicable, the Applicant seeks variance relief from the requirement of §2101.1 of the Zoning Regulations to provide fewer than the required number parking spaces. The Applicant proposes to demolish the lower-scale, historically "non-contributing" portions of the existing improvements at the northern end of the Property, excavate the rear portion of the lot and to construct a garage at the cellar level to contain approximately 27 parking spaces. Given the existing improvements and the difficult dimensions and configuration of the Property, the Applicant originally proposed to provide no parking in the Project, however, in response to concerns raised in the community, the Applicant has undertaken further study and determined to convert a significant portion of space

in the cellar level that was earlier contemplated for retail and other commercial uses into parking, to be accessed by ramp at the northwest corner of the Property.

Based upon the abovementioned constraints impacting the Property, the Applicant is experiencing great difficulty in developing a marketable mixed use project on the Property in strict compliance with the Zoning Regulations. The Applicant has maximized the below-grade parking while attempting to preserve a viable commercial use of a portion of the cellar level. Nonetheless, to the extent the Applicant cannot provide the total number of parking spaces that are required for the Project, the Applicant requests variance relief from the Board from the parking requirements for the Property.

2. §774, Rear Yard Requirement

Section 774 of the Zoning Regulations requires that buildings in the C-2-B District provide a rear yard of no less than 15 feet in depth. The Project steps back from the rear lot line approximately seven feet. Utilizing the measurement standard established in §774.7, the Project provides an effectively compliant rear yard for the portion of the Project less than 20 feet in height (§774.7(a)) based upon the location of the 16-foot-wide public alley behind the Project's rear wall (seven feet three inches rear yard provided plus eight feet to mid-point of alley exceeds the 15 foot rear yard minimum). Nonetheless, without relief from the 15-foot rear yard requirement, the portion of the Project above the 20-foot threshold is technically noncompliant, pursuant to §774.7(b)(rear yard measured from rear lot line rather than centerpoint of public alley).

Variance relief from the rear yard requirement is necessary in order for the Applicant to create a viable commercial floor plate on this exceptionally narrow and deep lot and to incorporate the dilapidated, historically-designated improvements into a code-compliant modern structure with modern systems and required egress. Furthermore, as noted above, the ingress/egress for the ramp to the below-grade parking is proposed to be located in the northwest corner of the Project. Movement of the building back further from the rear lot line would compromise ramp access to the provided parking as well the amount of parking spaces that can be provided on-site.

C. **Variance Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan.**

The Applicant proposes to construct the mixed-use building on the Property with no substantial detriment to the public good and with no impairment to the intent, purpose and integrity of the Zone Plan, as set forth below:

1. **§2101.1, Parking**

The Applicant has engaged Kimley-Horn and Associates, Inc. to analyze the Project's parking component for effective sufficiency. Kimley-Horn is well experienced with the parking and traffic demands of the immediate neighborhood, having undertaken the traffic analysis for the Progression Place PUD currently under construction next door to the site. According to Kimley-Horn's findings, which will be presented in testimony at the public hearing, given relative mode share based upon

the types of tenants who will most likely be attracted to this unique site along with convenient access to MetroRail within a block of the site, the effective peak parking demand for the site will be satisfied by the parking proposed to be provided in the Project.

a. Public Good:

To the extent applicable, relief from the parking requirements in the present case will not result in substantial detriment to the public good. As noted above, according to the Kimley-Horn analysis, the 27 parking spaces provided on-site will satisfy the anticipated peak demand for the site in light of the office and retail tenants who are expected to be drawn to the site, the pedestrian-oriented neighborhood-serving retail uses contemplated, and the close proximity to public transportation.

b. Zone Plan:

The grant of variance relief from the applicable parking requirements in the present case likewise will not impair the purpose or integrity of the Zone Plan. As the Board is aware, generally additions to historic resources are exempt from the requirement to provide additional parking. An exception to this normal exemption occurs where the gross floor area of a historic resource is being increased by 50 percent or more, in which case additional parking shall be provided. In the present case, the proposed building envelope additions result in a gross floor area increase just over the 50 percent threshold (58 percent increase). In light of the extensive

amount of below-grade parking proposed to be provided in the Project, any grant of parking relief needed in the present case will not work a substantial detriment to the Zone Plan.

2. §774, Rear Yard Requirement

The Applicant requested variance relief from the rear yard provisions of §774 can likewise be granted without threat of detriment to the public good or harm to the integrity of the Zone Plan. As noted above, the existing improvements on the Property already result in a nonconformity as to rear yard. While the Applicant seeks to replace the current one- and two-story spaces at the rear of the Property with three- and four-stories of new construction, the footprint of this new construction will actually be stepped back farther from the rear lot line of the Property than the current footprint. The Property is bounded on all sides by public rights of way, including to the north by a 16-foot wide public alley. Furthermore, across that public alley to the north is the rear elevation of the Howard Theatre, further mitigating the potential impact of the proposed encroachment of new construction into the required rear yard.

Nor does approval of the requested rear yard variance result in any harm to the integrity of the Zone Plan. The proposed rear yard marks an increase of approximately seven feet over the current rear yard. In addition, pursuant to §774.7(a) the proposed construction is actually compliant for rear yard purposes to a height of 20 feet.

For all the above reasons, the Application qualifies for variance relief from §§ 2101 and 774 of the Zoning Regulations, to the extent applicable.

**VI.
THE APPLICANT MEETS THE REQUIREMENTS FOR SPECIAL
EXCEPTION RELIEF UNDER SECTIONS 770.6 AND 411.11
OF THE ZONING REGULATIONS**

As set forth above, special exception approval is required from the roof structure setback requirements of §§770.6 and 411.2 of the Zoning Regulations. As the Board is aware, a special exception use is a use deemed compatible with other uses permitted in that particular zoning classification provided that the specific regulatory requirements are met. In reviewing applications for a special exception, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth in the appropriate section. If the Applicant meets its burden, the Board must ordinarily grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695 (1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (1973).

In the context of the present application, §411.2 of the Regulations provides that penthouses in the commercial zoning districts shall comply with the provisions of §770.6. Section 770.6, in turn, provides that if rooftop housing is provided on the roof of a building or structure in a commercial zoning district, said roof structure shall: (a) meet the requirements of §411 of the Regulations; (b) be setback from all exterior walls a distance at least equal to its height above the roof upon which it is located; and

(d) not exceed 18 feet six inches in height.¹ As set forth above, special exception approval may be required to the extent the Applicant cannot comply with the one-to-one roof structure setback from all of the exterior walls of the proposed building, as set forth in §770.6(b).

Under §411.11 of the Regulations, the Board of Zoning Adjustment may approve the location, design, number, or any other aspect of a roof structure even if it does not comply with the requirements of §770.6, where it would be impractical because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. The Board has the power to approve a roof structure under §411.11, provided that the intent and purpose of the chapter and title of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not affected adversely.

As proposed, the Project offers a complex roofline with multiple levels. A component of the rehabilitation project is the repurposing of an existing elevator core for elevator and fire stair access. The resulting penthouse structure is set back more than is required along the front of the building but appears that it may not meet the prescribed setback along the western façade of the building (Exhibit C). This situation is created by the relative narrow configuration of the site, the varying levels of the existing building fabric, location of the central elevator core of the building and the efficiency to the floor plan layout of locating one of the required stairwells within the central core of the building and also at this corner of the floor plate. Were the

¹ Section 770.6(c) applies only to properties within the C-5 District and thus is not discussed herein.

Applicant required to locate these functions elsewhere, it would create significant interior design and layout inefficiencies throughout the building. No light and air to adjacent buildings will be adversely impacted by the setback deficiency along this street-facing elevation of the building. To the extent that the multiple roof levels create similar noncompliance with the requirements of §770.6 as the Applicant refines its building operations, the Applicant requests special exception relief.

The Applicant's roof level plan is in keeping with the purpose and intent of the Zoning Regulations. For the above stated reasons, special exception relief from the roof setback requirement of §770.6(b) is appropriate in the instant case, pursuant to §411.11.

VII. WITNESSES

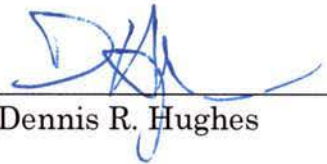
- A. Representative of the Applicant.
- B. Sacha Rosen, R2L Architects.
- C. Edward Papazian, Kimley-Horn and Associates, Inc.
- D. Steven E. Sher, Director of Zoning and Land Use Services,
Holland & Knight, LLP.

VIII. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully submitted,

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