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October 2, 2012

**VIA HAND DELIVERY**

D.C. Board of Zoning Adjustment  
Suite 210  
441 4th Street, N.W.  
Washington, D.C. 20001

Re: Board of Zoning Adjustment Application 18417 (550 Penn Street, NE)  
**Prehearing Submission**

Dear Members of the Board:

On behalf of the Applicant in the above-referenced case, enclosed please find an unbound original and twenty copies of the prehearing submission in support of the above-referenced application for variance relief.

Should you have any questions regarding this matter, please do not hesitate to have staff contact me.

Sincerely,

HOLLAND & KNIGHT LLP

  
Christine Moseley Shiker

Enclosures

cc: Karen Thomas, Office of Planning  
Jamie Henson, DDOT  
Advisory Neighborhood Commission 5B

(Via Hand Delivery; w/enclosure)  
(Via Hand Delivery; w/enclosure)  
(Via US Mail; w/enclosure)

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 18417

EXHIBIT NO. 26

Board of Zoning Adjustment  
District of Columbia  
CASE NO.18417  
EXHIBIT NO.26

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

**APPLICATION OF THE  
EAJ 550 PENN ST LLC  
550 PENN STREET, N.E.**

**BZA APPLICATION NO. 18417  
HEARING DATE: OCTOBER 16, 2012  
ANC 5B**

**STATEMENT OF THE APPLICANT**

**I.  
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of EAJ 550 Penn St LLC (the "Applicant") in support of its application to the Board of Zoning Adjustment for the following variance relief from the requirements of the Zoning Regulations pursuant to 11 DCMR § 3103.2: (i) a variance to reduce the parking required by Section 2101.1 of the Zoning Regulations; and (ii) a variance to reduce the size of loading berths required by Section 2201.1 of the Zoning Regulations. The relief requested will permit the existing building at 550 Penn Street, N.E. (Lot 2, Square 3594) (the "Site") to be reused for light processing/manufacturing uses. The Site is shown on the portion of the zoning map attached as Exhibit A. The reuse of the existing structure is appropriate for the Site, fully compatible with the surrounding area, and not inconsistent with both the Comprehensive Plan and the Zoning Regulations.

**II.  
JURISDICTION OF THE BOARD**

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance relief requested herein pursuant to Section 3103 of the District of Columbia Municipal Regulations ("Zoning Regulations"). 11 DCMR § 3103.

### **III.** **BACKGROUND**

#### **A. Description of the Site and Existing Building**

The Site is located at Lot 2 in Square 3594. The Site is located on the northeast side of Penn Street, between 5<sup>th</sup> and 6<sup>th</sup> Streets, N.E., and includes 26,251 square feet of land area. The Site is zoned C-M-1.

The Site is improved with a one-story warehouse-type building that was built in or around 1965. According to the Zoning Computation Sheet ZA-65-38 and Certificate of Occupancy B54427, both of which are attached as Exhibit B, the building was originally constructed for warehouse/storage and loading of carbonated beverages/bottles. The building comprises 26,097 square feet of the 26,251 square foot lot. Based on the most recent use and certificate of occupancy, a copy of which is attached as Exhibit C, the building was used as a floral storage warehouse and distribution center. The existing building has three loading entrances on the southern side of the building facing Penn Street; however, no specific loading facilities are located within the building. While the Zoning Computation Sheet identifies parking being provided within the building, the building does not include a designated car entrance, striped parking spaces, or any other indication of use as a parking area such as proper ventilation or safety measures for carbon monoxide gases.

#### **B. Description of Surrounding Area**

The Site is located on the north end of the Florida Avenue Market, which is an approximately 40 acre area in Northeast DC, near the intersections of Florida Avenue and New York Avenue between Penn Street and 6<sup>th</sup> Street. Gallaudet University is located to the east of the Florida Market. To the west of the Site is the Maurice Electric warehouse. Immediately to the north of the Site is the National Park Service's Brentwood Maintenance Facility.

The Future Land Use Map of the Comprehensive Plan designates the Site and the surrounding area for Production, Distribution and Repair Uses, as shown on the attached Exhibit D. The Site is located within close proximity to a variety of transportation options, including the NoMA-Galludet University Metrorail Station on the red line, Metrobus lines including two of the most well-used routes in the entire system, the Metropolitan Branch Trail and is a short walk to Union Station which provides numerous transportation options.

**C. Existing Zoning**

The Site is zoned C-M-1. The Commercial-Light Manufacturing (C-M) Districts are intended to provide sites for heavy commercial and light manufacturing activities employing large numbers of people and requiring some heavy machinery under controls that minimize any adverse effect on other nearby, more restrictive districts. Light manufacturing and processing uses are permitted as a matter of right, subject to external effects review of Section 804. 11 DCMR § 801.7(d). As a matter-of-right, the C-M-1 district permits a maximum building height of 40 feet and a maximum FAR of 3.0. The Applicant proposes no changes to the height or density of the existing building.

**D. Project Description**

The Applicant proposes to reuse the existing warehouse building for light manufacturing/processing and food storage uses, primarily being food preparation-type tenants. Specifically, the project will serve as off-site kitchens and storage for several restaurant operations located across the city. Foods such as smoked meats, chocolate, ice cream, and baked goods are anticipated to be made on-site and distributed to local restaurants. To accommodate these uses, the Applicant will divide the building into multiple parts to be used as shown on the

plans attached as Exhibit K. The subdivided areas may contain accessory retail sales of the products being manufactured on-site, which would be very minimal in size.

The Applicant will improve and update the Site. To upgrade the exterior of the existing building, the Applicant intends to introduce oversized glass doors surrounded by large sections of glass in what is currently solid brick, replace the existing loading bay doors, repair damaged brick, paint the building, and incorporate new building signage. The existing loading entrances to the building will be adjusted to better conform to the proposed division within the building for the individual tenants. As a result, two of the existing driveways will be relocated and one of the existing driveways will be used in its current location. Within the building, the Applicant will incorporate two loading berths at 12 feet x 25 feet and one service delivery space at 10 feet x 20 feet. The project will not include any off-street parking.

The proposed renovation will also include the construction of a sidewalk and curb in public space along the north side of Penn Street adjacent to the Site as well as a new accessible ramp at the crosswalk. Currently, there is no sidewalk in this area. In addition, the Applicant will improve the landscaping by incorporating new grasses, providing trees in planting areas along the street, and installing bike racks among other hardscape improvements. All of these efforts will enhance the pedestrian facilities and experience in the area as well as activate the streetscape.

**V.**  
**THE APPLICANT MEETS THE TEST FOR**  
**VARIANCE RELIEF TO REDUCE THE PARKING REQUIRED AND**  
**REDUCE THE SIZE OF LOADING BERTHS REQUIRED**  
**PURSUANT TO 11 DMCR §§ 2101.1 AND 2201.1**

**A. Standards for Granting Area Variances**

Under D.C. Code §6-641.07(g)(3) and 11 DCMR 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

*See French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, the Site and proposed reuse of the existing building with the variances requested meet all three prongs of this test.

**B. Exceptional Conditions or Situations**

The Site is affected by several exceptional conditions due to its unique shape and size. The Site is a triangularly-shaped corner lot. At its western edge, the lot has a depth of 202 feet while at its eastern edge, the lot has a depth of only 31.5 feet. In addition, the Site is improved with a one-story warehouse building constructed in the mid-1960's which covers almost 100% of the lot. This existing building includes no below-grade space or any direct parking access other than through required loading facilities. The Board of Zoning Adjustment has found that

practical difficulty for an area variance may result from the structures on the subject property and not just the land itself. *Monoco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1099 (D.C. 1979) ("existing structures are as important as topography in creating 'other extraordinary or exceptional situation or condition of a specific piece of property.'" citing *Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 291, 294 (1974)).

**C. Variance from Parking Requirement of Section 2101.1**

Section 2101 of the Zoning Regulations requires parking in the as follows:

| <b>Zoning Requirement</b>                                 | <b>Calculation</b> | <b>Parking Required</b> |
|-----------------------------------------------------------|--------------------|-------------------------|
| Manufacturing, Industrial, or Whole Sale in all Districts | 26,097/1,000 sf    | 26.1 spaces             |
|                                                           | <b>TOTAL</b>       | <b>26 spaces</b>        |

Given the existing building which covers almost 100% of the Site, there is no space to construct off-street parking on the Site, other than within the building. Furthermore, there is no cellar or basement within the building in which to provide below-grade parking, which is the traditional location of parking within buildings in the District of Columbia. Off-street parking cannot be provided within the building without significantly decreasing the building's usable space, as is discussed further below.

While the historic documents for the building indicate that parking was provided within the building, the Applicant has located no evidence that the building ever included parking. Specifically, the building was not constructed with the required ventilation systems, including carbon monoxide sensors, to permit compliance with regulations for parking facilities. Furthermore, based on the current configuration of the building, the access to any internal parking spaces would be through the same access as for the loading berths. This would result in unacceptable conflicts for ingress and egress if it was used for both purposes.

If parking was to be provided within the building, the Site's irregular shape limits the number of zoning compliant parking spaces that could be provided within it, when also providing the required loading. Based on the Applicant's review of providing such parking and loading, it was determined that more than 10,000 square feet of the approximately 26,000 square foot building would be utilized for the required parking and loading within the building. This area represents almost 40% of the existing structure. This significant limitation on the Applicant's use of the existing building would be unnecessarily burdensome on the Applicant, allowing only 16,000 square feet of the building to be used for permitted uses. The D.C. Court of Appeals has held that, to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome." *Gilmartin v. District of Columbia Board of Zoning Adjustment*, 579 A.2d at 1170 (D.C. 1990). In that case, the Court noted that "the severity of the variance(s) requested;" "the weight of the burden of strict compliance;" "the effect the proposed variance(s) would have on the overall zone plan;" and the "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration." *Id.* at 1171. Thus, the exceptional conditions of the Site lead to a practical difficulty in complying with the Zoning Regulations.

**D. Variance from Loading Requirement of Section 2201.1**

Section 2201 of the Zoning Regulations requires loading for a light manufacturing/process use in the C-M-1 District as follows:

| <b>Zoning Requirement</b>                                    | <b>Loading Requirement</b>                                                               | <b>Loading Provided</b>                      |
|--------------------------------------------------------------|------------------------------------------------------------------------------------------|----------------------------------------------|
| Manufacturing or Industrial Establishment in all Districts - | 1 Berth at 55 feet<br>1 Berth at 30 feet<br>1 Platform at 200 sf<br>1 Platform at 100 sf | 2 Berths at 25 feet<br>2 Platforms at 100 sf |

Given the irregular shape of the Site and the existing building, the Applicant has a practical difficulty in providing a 55-foot loading berth. The Site is not wide enough to

accommodate a 55-foot truck berth in the eastern portion of the existing building given the narrow dimensions. While a 55-foot berth could be located in the western portion of the existing building due to its greater depth, the truck would have a significant difficulty access the site given the maneuverability within the relative narrow right-of-way.

The Applicant proposes incorporating two loading berths at 12 feet by 25 feet within the project for the large tenants and one 10 feet by 20 feet service delivery space for the smaller tenants. In addition, as initially discussed with the District Department of Transportation, an on-street loading space will be provided for the tenants in the smallest spaces who do not have the need to store a service vehicle on site in climate controlled conditions. The future tenants at the project are expected to conduct loading and distribution operations using commercial cargo vans with some supplementary service using refrigerated box trucks. These types of service vehicles can be accommodated within the proposed loading facilities and will fully satisfy the needs of the tenant.

**E. No Harm to Public Good or Zone Plan for both Parking and Loading Variance**

Relief can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zone Plan, as embodied in the Zoning Regulations and Map. While no parking is provided, the building is well-situated to multiple means of public transit, including Metrorail, several well-traveled bus routes, Amtrak, MARC, VRE, and the Metropolitan Branch Trail. The Applicant's traffic consultant has evaluated the project, which is documented in the Transportation Impact Statement attached as Exhibit E. This report finds that, given the anticipated uses of the project, similarity in transportation characteristics to that of what has historically been generated by the Site, and the proximity to public transportation facilities, the proposed reuse of the existing building will have no impact on

the transportation network. In addition, the Transportation Impact Statement finds that all of the project's transportation needs can be accommodated by the existing roadway, public transit infrastructure and ample available on-street parking.

Furthermore, the Transportation Impact Statement fully evaluated the loading needs for the Site and concluded that the loading provided will be sufficient to accommodate the loading and delivery needs of the tenants based on the proposed reuse of the building. The supplemental on-street loading facility will also assist in meeting any excess demand for loading needs. According to the report, all loading and delivery activities can be accommodated in a safe manner. Accordingly, there will be no detrimental impact on the public or on the Zone Plan.

## **V. COMMUNITY SUPPORT**

The Applicant has been working with the Advisory Neighborhood Commission 5B ("ANC 5B") relating to this project. The Applicant has met with several of the ANC commissioners over the past weeks to review the application. The application will be presented at the ANC 5B06 Small Member District meeting on October 1, 2012, and will be presented to the full ANC at its regularly scheduled meeting on October 4, 2012.

## **VI. EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION**

- |                          |                                                                         |
|--------------------------|-------------------------------------------------------------------------|
| <u><b>Exhibit A:</b></u> | A portion of the Zoning Map showing the Site;                           |
| <u><b>Exhibit B:</b></u> | Zoning Computation Sheet ZA-65-38 and Certificate of Occupancy B54427;  |
| <u><b>Exhibit C:</b></u> | Certificate of Occupancy for Metropolitan Florist Delivery Cooperative; |
| <u><b>Exhibit D:</b></u> | Generalized Land Use Plan and Interpretive Legend;                      |
| <u><b>Exhibit E:</b></u> | Transportation Impact Statement from Gorove Slade;                      |

- Exhibit F: Signed Surveyor's Plat;
- Exhibit G: Outline of Testimony of representative of the Applicant;
- Exhibit H: Outline of Testimony and Resume of John Cooney, JCA Architects;
- Exhibit I: Outline of Testimony and Resumes of Daniel Van Pelt and Robert B. Schiesel, Gorove Slade Associates;
- Exhibit J: Outline of Testimony and Resume for Steven E. Sher, Land Planner; and
- Exhibit K: Updated Architectural Plans and Drawings for the project.

**VII.**  
**WITNESSES**

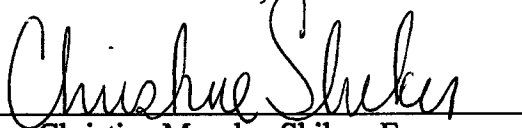
- A. Reynolds Allen, representative of the Applicant
- B. John Cooney, JCA Architects, architect for the project
- C. Daniel Van Pelt or Robert B. Schiesel, Gorove Slade Associates, traffic consultant for the project
- D. Steven E. Sher, Land Planner

**VIII.**  
**CONCLUSION**

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

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