

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

Application for a Modification to BZA Order No. 18417 for 550 Penn Street, N.E.

**PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF
AND STATEMENT OF EXISTING AND INTENDED USE**

I.

Nature of Application

This is a request by the EAJ 550 Penn St LLC (the “**Applicant**”) for the approval of a modification to the previous variance approval under BZA Order No 18417 (the “**Order**”) at the existing building located at 550 Penn Street, N E (Lot 2, Square 3594) (“**Property**”), in the District of Columbia. Previously, the Order granted the approval of variance relief pursuant to 11 DCMR § 3103.2 from the parking (§ 2101.1) and loading (§ 2201.1) requirements of the Zoning Regulations to allow the use of an existing building for light manufacturing/processing in the C-M-1 Zone District at the Property. The project will conform to the Zoning Regulations in all other ways.

The Applicant is seeking to modify the previously approved variance relief from the parking requirements of 11 DCMR § 2101.1 and the loading requirements of 11 DCMR § 2201.1 for light manufacturing/processing uses in order to allow for the inclusion of an approximately 8,619 square foot theater use in the building. The use of the remainder of the building would remain as light manufacturing/processing.

If deemed acceptable to the Board, the Applicant wishes to have this application considered as a minor modification under 11 DCMR § 3129.2. If this application is not considered a minor modification by the Board, pursuant to 11 DCMR § 3113.8, the Applicant

will file its Statement of the Applicant with the Board no fewer than fourteen (14) days prior to the public hearing for the present application, if any. In this statement and at the public hearing, if any, the Applicant will provide additional testimony to meet its burden of proof to obtain the Board's approval of the requested variance relief. Following herein, as required by the Board's application process, is a preliminary statement indicating how the Applicant meets the burden of proof for the modification request.

II.

Jurisdiction of the Board

The Board of Zoning Adjustment ("BZA") has jurisdiction to grant the relief requested pursuant to 11 DCMR §§ 3129 1, et seq of the Zoning Regulations.

III.

Information Regarding Project Modification and Property

A. Description of Project and Modification

As shown on the plans attached as Exhibit G to the package (the "**Plans**"), the Applicant proposes to alter the use of the center 8,619 square foot portion of the building ("**Center Space**") from light manufacturing/processing to a theater. Such modified use of the Center Space resulted from the interest of a unique theater user for such space, wishing to utilize such space on a temporary basis. Therefore, the only change to the prior-approved project is that the interior configuration and use of the building will be modified. The Applicant is retaining, but not expanding, the existing building and continuing to restore and renovate the structure.

B. Background

The Property is comprised of Lot 2 in Square 3594. The Property is located on the northeast side of Penn Street, N E., between 5th and 6th Streets, N E and contains a land area of

approximately 26,251 square feet. The Property is improved with a one (1) story building that was constructed on or around 1965 and that occupies almost the entirety of the Property's lot ("Building"). The Property is zoned C-M-1 and is in the process of being renovated and converted into productive uses reflecting the new Florida Avenue Market.

The Building appears to have been originally constructed as a warehouse. Prior to the renovation of the Building in 2012 and 2013, based on the most recent use and certificate of occupancy, the Building was used as a floral storage warehouse and distribution center. The Building has been renovated in part and now includes two new tenants – the Neighborhood Restaurant Group and Dolcetta gelato manufacturing and distribution, as noted on Exhibit J of the package. The Building has several access points for trucks and cars, but does not include striped parking spaces or designated loading facilities.

As noted in the Self-Certification, included in the package as Exhibit A, the Building is and will remain nineteen (19) feet, eight (8) inches tall and have a floor area ratio ("FAR") of approximately 1.0, as it exists now, and as initially approved. The project will not include any parking spaces – consistent with the prior existing Building and as initially approved.

C Existing and Intended Use

As noted above, the Building is currently utilized by the Neighborhood Restaurant Group and Dolcetta gelato. Its Center Space is currently vacant. The application proposes to continue the Neighborhood Restaurant Group and Dolcetta gelato uses while adding a theater use into the Center Space.

IV.

Description of Relief Requested

In order to implement the modification to the project, the Applicant requires modification to the prior approval under BZA Order No 18417, which approved variance relief from the parking and loading requirements. A brief overview of the previously-approved variances and their relation to the proposed modification are as follows

- **Parking Requirement**
 - **Previous Approval** – Under the prior Order, the Applicant was granted relief from 11 DCMR § 2101.1 which requires one (1) parking space for each 1,000 square feet of manufacturing, industrial, or wholesale use. Since the project was proposed to contain 26,251 square feet of light manufacturing/processing use, a variance from the entirety of the 26 vehicle parking requirement was previously approved.
 - **As Modified** – As the result of the use of 8,619 square feet of the Building as a theater use (for approximately 160 seats) and based on a theater's parking requirement ratio of one (1) parking space per ten (10) theater seats¹, the parking requirement rises to 34 spaces for the modified project (an increase of eight (8) parking spaces above the number of parking spaces previously approved). Therefore, the Applicant is still not providing parking spaces on the Property due to the full lot occupancy of

¹ The use of the remaining 17,632 square feet of the Building would remain light manufacturing/processing and therefore 18 parking spaces would be required. Therefore, 18 spaces would be required for the light manufacturing/processing and 16 spaces would be required for the theater, for a total of 34 spaces.

the Building and the parking variance would remain a complete waiver from parking on the Property

- Loading Requirement

- Previous Approval – Under the prior Order, the Applicant was granted relief from 11 DCMR § 2201 1 which, based on the use of 26,251 square feet of the Building as a manufacturing, industrial, or wholesale use, previously required one (1) loading berth of at least 55 feet deep, one (1) loading berth of at least 30 feet deep, one (1) loading platform of at least 200 square feet, and one (1) loading platform of at least 100 square feet. The Applicant was approved to provide two (2) loading berths of 25 feet deep and two (2) loading platforms of at least 100 square feet
- As Modified – With the use of the Center Space as a theater use of less than 500 seats, there is no separate loading requirement for the theater and the loading requirement for the manufacturing, industrial, or wholesale use was reduced to one (1) loading berth of at least 30 feet deep and one (1) loading platform of at least 100 square feet² Therefore, the loading requirement was reduced and the degree of loading variance required decreases as the result of the modification

² The use of the remaining 17,632 square feet of the Building would remain light manufacturing/processing and therefore, since such amount of square footage is less than 25,000 square feet, only one (1) loading berth of at least 30 feet deep and one (1) loading platform of at least 100 square feet would be required. Such amount would be the only loading requirement for the modified project.

V.
Satisfaction of Standards Relief for Modification

Under 11 DCMR Section 3129, the requested modification to the plans approved by the BZA may be approved if such modification will not alter the Board's findings and conclusions upon which the Board's approval was based. Such is the case here since the standards for the requested variance relief remain satisfied.

In order to obtain area variance relief an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) 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. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972)

A. The Property is Affected by the Same Exceptional Conditions Previously Determined by the Board

The Property still meets the "exceptional conditions" element of the variance test. The Property is an unusual and atypical triangular lot which is improved with an existing one (1) story building constructed in the mid-1960's. The Property has street frontage on two sides, abuts an existing building generally to the east, and abuts the National Park Service maintenance site generally to the north.

The existing building covers approximately 100% of the Property. In order to retain the existing building emblematic of the history of the Property and the surrounding neighborhood, the Applicant must work within the constraints of the Building, including its relationship to the

lot and the as-built condition. Such existing Building has an impact on the inclusion of parking and loading facilities in the project

B Strict Application of the Zoning Regulations Would Result in a Practical Difficulty as Previously Determined by the Board

As in the original approval, renovating the warehouse still requires working within the parameters of the existing Building. Combined with the odd configuration of the lot, these existing parameters create a large set of practical difficulties that arise from the unique and exceptional conditions of the Property. The result in this case is that it is difficult to exceptionally provide fully-compliant parking and loading at the Property

Given the configuration of the Building and that the Building's exterior structure is still not being modified as the result of the project, there is still no space to construct parking on the Property. While the history of the Building indicates that parking was provided within the structure, the Building was not originally constructed with the ventilation systems to provide such parking, including carbon monoxide sensors that would be required today. Further, the access to any internal parking spaces would be through the same access as for the loading berths, and therefore would generate conflicts if such access was jointly utilized. Similarly, given the existing building and proposed uses within it, the Applicant still has a practical difficulty providing all required loading facilities on the Property (although less such facilities are required as a result of the requested modification, as described above). The Applicant proposes to retain its two (2) previously-approved 25 foot loading berths which more appropriately fit within the existing space and will fully satisfy the needs of the users of the Building

C. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan as Previously Determined by the Board

The variances from the parking and loading requirements still do not cause substantial detriment to the public good and or impair the intent, purpose, and integrity of the Zone Plan. There is still no adverse impact from these variances. The project still furthers the goals and policies of the Zoning Regulations related to the reuse of existing structures and does not create any adverse impacts on neighboring properties or the road network.

Regarding the proposed use of the Center Space, such use and the related parking proposal will not negatively impact the Zone Plan of the District. Although the project will not satisfy the “on site” parking requirements, as found by the Applicant’s traffic consultant in the original BZA proceeding, the Property is still surrounded by ample underutilized street parking. It is also well-situated to multiple means of public transit, including Metrorail, bus routes and the Metropolitan Branch Trail. To require a full parking garage would require either excavating a garage – a very expensive and inefficient task that might make the renovation of the Building financially infeasible – or converting above-ground space to undesirable parking uses (and might require separate, new variance relief). Thus, the relief from the parking requirement is in harmony with the “intent and purpose” of the parking regulations as applied to commercial buildings in this Zone District.

Regarding the loading, based on the proposed use of the project, the loading provided will be more than sufficient for the tenants of the building. Large trucks are not anticipated for such spaces, and will certainly not be anticipated for a theater use. As mentioned above, the proposed modification actually reduces the extent of the loading variance requested.

VIII.

Conclusion

For all of the above reasons, the Applicant is entitled to the modification to the approved plans