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June 16, 2014

VIA FEDEX OVERNIGHT

D.C. Board of Zoning Adjustment
Office of Zoning
441 4th Street, N.W., Suite 200-S
Washington, D.C. 20001
Attention: Chairperson Lloyd Jordan

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18741
EXHIBIT NO. 31

RECEIVED
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2014 JUN 17 PM 1:59

Re: Application No. 18741
Application of BB&H Joint Venture, on behalf of Potomac Foods Company – II, Inc., for Continued Use of a Parking Lot Accessory to an Existing Burger King Restaurant – (Square 1971, Lot 822)

Dear Members of the Board:

During the public hearing in the above-referenced case, the Board asked the Applicant to supplement the record with updates on the Applicant's compliance with the previous Order (No. 17875). This supplement will be discussed in the next status hearing scheduled for July 8, 2014. The requested updates to the record are addressed below.

I. Compliance with the Conditions in Order No. 17875

1. **Condition 1:** The application shall be approved for a period of three (3) years.

Update: The Applicant is seeking to comply with the Zoning regulations by filing the instant Application.

2. **Condition 2:** The dumpsters shall be removed from the accessory parking lot.

Update: The dumpsters have been removed from the accessory parking lot and relocated on the Restaurant parking lot. See photograph attached as **Exhibit A**.

3. Condition 3: At no time shall delivery, vendor, or trash trucks be permitted to enter the accessory parking lot.

Update: The Applicant is not aware of any delivery, vendor, or trash trucks using the accessory parking lot, and there is no need for any delivery, vendor, or trash trucks to enter the parking lot.

4. Condition 4: Two trash cans shall be maintained on the parking lot and emptied at least once per day, or more often if they are overflowing with trash.

Update: There are two trash cans on the Property, and the damaged trash can that was previously on the Property has been removed and replaced. *See* photograph attached as **Exhibit B**. These trash cans are emptied at least once per day.

5. Condition 5: The parking surface and fence along the western boundary of the site shall be maintained in good condition at all times. All parts of the lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the property shall be pruned at least once per year.

Update: The lot is free of refuse and debris, the trees are pruned at least once per year, and as the photographs demonstrate, the landscaping is well-maintained. *See* photographs attached as **Exhibit C**. The Applicant has contracted for the repair of potholes on the parking surface and the potholes should be filled shortly.

6. Condition 6: An exterminator shall perform extermination services twice a month to control any rodents. In addition, the portion of the fence owned by the Applicant and located

on the property shall be reinforced underground to help prevent any rodents from entering the neighbors' properties.

Update: The Applicant has taken steps to help ensure that the lot will be free of rodents. As the photographs attached as **Exhibit D** demonstrate, there are bait stations along the western border of the Property to control any rodents. The Applicant has contracted for extermination services to be performed once a month. The Applicant believes this is appropriate given the addition of the bait stations. If there appears to be a recurring problem with rodents, the Applicant will increase the frequency of the extermination services. In addition, as explained in Section II of the Applicant's post-hearing supplement dated February 13, 2009, the Applicant built a twelve (12) inch dirt berm and planted twenty-five (25) holly shrubs to provide underground reinforcement. Exterminators warned the Applicant that planting any additional ground cover could become a haven for rats and thus no additional ground cover was planted. Instead, sod, a preferable ground cover, was planted.

7. Condition 7: The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the property of the name, telephone number, and e-mail address of the appointed liaison.

Update: Simultaneously with the submission of this report on June 16, 2014, an updated annual report was sent to the ANC 3F and all ANC 3F residents informing them that there are now two appointed neighborhood and ANC liaisons: Brian Timmons and Mark James. The letter also provided their phone numbers and e-mail addresses.

8. Condition 8: The Applicant shall provide to the ANC and the residences within 200 feet an annual report summarizing its compliance with the conditions.

Update: The Applicant has provided and distributed an Annual Report detailing compliance as of April 15, 2014 and an update to the Annual Report on June 16, 2014.

9. Condition 9: Existing wheel stops, signage, guardrail, parking space striping, and direction signage painted on the pavement shall be properly maintained.

Update: The Applicant has repainted the parking space striping, the existing wheel stops, and the guardrail on the Property. The Applicant has also contracted for the repair of the potholes on the Property and this repair should be completed shortly. See photographs attached as **Exhibit E**.

10. Condition 10: The Applicant shall, as necessary, repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.

Update: The Applicant has contracted for the painting of entrance and exit arrows and this repair should be completed shortly.

II. Community Input

In response to the additional conditions proposed by the ANC in the ANC Report dated March 23, 2014, below are the Applicant's responses to supplement the Applicant's responses in the pre-hearing statement dated April 15, 2014:

1. Additional Condition 1: Installation of a permanent bike rack in the parking lot.

Update: The Applicant has ordered a permanent 'U' rack bicycle storage rack, which is the preferred model recommended by the District Department of Transportation,

to be installed in the accessory parking lot and which can support up to eight bicycles at one time.

2. **Additional Condition 2: Installation of pervious paving.**

Update: Replacing the current surface with a pervious surface is a very costly project. In addition, it would adversely affect the operations of Burger King and impact the local residents as the parking lot would be unavailable to customers for a significant period of time. There would also be additional noise to the adjacent residential neighborhood during the construction period. In addition, installing pervious surfaces is not required by the zoning regulations. Section 2303.1(a) of the zoning regulations, which requires all-weather surface for parking lots, allows for traditional impervious surfaces. To help minimize runoff, the Applicant has increased shrubbery along the western border of the Property. If, notwithstanding the significant economic burden it places on the Applicant, the Board finds pervious paving necessary, the Applicant proposes that it be given until the year 2020 to satisfy this condition. At the suggestion of Arthur Jackson from the Office of Zoning, the Applicant has spoken with Meredith Upchurch from the D.C. Department of Transportation to obtain information on types of pervious paving.

3. **Additional Condition 3: Installation of increased shrubbery.**

Update: The Applicant has added shrubs along the western border of the Property.

4. **Additional Condition 4: Provide Car Sharing.**

Update: The Applicant has reached out to Zipcar and Enterprise to obtain information on providing car-sharing locations. As of the date of submission of this report, the Applicant has not received a response from either car-sharing company. The Applicant believes that the need for car sharing at this location is minimal as there are currently fourteen (14) car sharing locations less than a mile from the Property. In addition, the lot is small and usually at capacity. Accordingly, the addition of a car sharing location space would create additional congestion on local streets. Therefore, the Applicant believes that it is not necessary to provide car sharing parking spaces on the Property and to do so would create additional issues for the community.

5. **Additional Condition 9: One space be designated as a van accessible parking space with a minimum of 96" wide access aisle per ADA requirements.**

Update: As the attached photograph demonstrates, the Applicant has designated one parking space as a van accessible parking space with a minimum 96" wide access aisle. *See* photograph attached as **Exhibit F**.

In addition, the ANC has raised an issue regarding the use of the Property as a holding area for the neighboring car wash. The Applicant has addressed this issue by having planters installed along the northern border of the Property to establish a clear demarcation between the Property and the neighboring car wash. *See* photograph attached as **Exhibit G**.

III. Supporting Exhibits

Exhibit A: Photograph of the relocated dumpsters.

Exhibit B: Photograph of the trash cans.

Exhibit C: Photograph of shrubbery on the western border of the Property.

Exhibit D: Photographs of bait stations on the western border of the Property.

Exhibit E: Photographs of the restriped lines.

Exhibit F: Photograph of van accessible parking space with a minimum 96" wide access aisle.

Exhibit G: Photograph of the planters.

IV. Proposed Conditions

1. The Application will be approved for a period of ***FIVE (5)*** years unless there is no objection to an ***indefinite*** approval.
2. ***There shall be no*** dumpsters ~~shall be removed from~~ ***in*** the accessory parking lot.
3. At no time shall delivery, vendor, or trash trucks be permitted to enter the accessory parking lot.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day, or more often if they are overflowing with trash.
5. The parking space and fence along the western boundary of the site shall be maintained in good condition at all times. All parts of the lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the property shall be pruned at least once per day.
6. An exterminator shall perform extermination services ***once*** ~~twice~~ a month to control any rodents. ~~In addition, the portion of the fence owned by the Applicant and located on the~~

~~property shall be reinforced underground to help prevent any rodents from entering the neighbors' properties.~~

7. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.
8. The Applicant shall provide to the ANC and the residences within 200 feet an annual report summarizing its compliance with the conditions.
9. Existing wheel stops, signage, guardrail, parking space striping, and direction signage painted on the pavement shall be properly maintained.
10. The Applicant shall, as necessary, repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.

V. Conclusion

The Applicant has worked hard and in good faith to address the various issues raised by the Board at the hearing. For the foregoing reasons, the Applicant respectfully requests that the Board approve the Application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard M. Pollak', with a stylized, sweeping flourish extending to the right.

Richard M. Pollak

TROUTMAN SANDERS

**Board of Zoning Adjustment
June 16, 2014
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**cc: ANC 3F (office), 4401-A Connecticut Avenue, NW, Box 244, Washington, D.C., 20008-2322 – by first class mail
Office of Planning, 1100 4th Street, SW, Suite E650, Washington, D.C. 20024 – by first class mail
Brian Timmons, Potomac Foods Company – II, Inc., 7611-N Rickenbacker Drive, Gaithersburg, Maryland 20879 – by first class mail
Mark James, Potomac Foods Company – II, Inc., 7611-N Rickenbacker Drive, Gaithersburg, Maryland 20879 – by first class mail
Nicola Harrison, Troutman Sanders LLP
Karina L. Sigar, Troutman Sanders LLP**

EXHIBIT A

PHOTOGRAPH OF THE RELOCATED DUMPSTERS





EXHIBIT B

PHOTOGRAPH OF TRASH CANS



EXHIBIT C

PHOTOGRAPH OF SHRUBBERY ON WESTERN BORDER OF PROPERTY







EXHIBIT D

PHOTOGRAPHS OF BAIT STATIONS ON WESTERN BORDER OF PROPERTY





EXHIBIT E

PHOTOGRAPHS OF RESTRIPEDED LINES



EXHIBIT F

PHOTOGRAPH OF VAN ACCESSIBLE PARKING SPACE



EXHIBIT G

PHOTOGRAPH OF THE PLANTERS

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