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July 8, 2014

Lloyd Jordan, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Application No. 18799
Party Status Request and Statement in Support

Chairperson Lloyd Jordan and Honorable Members of the Board:

On behalf of Chevy Chase Arcade, LLC, we hereby request party status in the above referenced case. The applicant, PNC Bank, operates a branch at 5530 Connecticut Avenue NW and seeks a special exception to allow continued use of accessory parking spaces at 3808-3816 Morrison Street NW. Chevy Chase Arcade, LLC, the owner of 5520 Connecticut Avenue NW, seeks (1) approval of its party status request, as the owner of both the adjacent property and of property rights in a perpetual easement over a portion of the property that is the subject of the above described application; and (2) amendment of the Application to include Chevy Chase Arcade, LLC's continued longstanding trash storage and pick-up on the Property.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP


By: Meredith H. Moldenhauer

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

**STATEMENT OF
CHEVY CHASE ARCADE, LLC**

APPLICANT:	PNC BANK NAT'L ASSOC.
BZA CASE NO:	18799
HEARING:	JULY 22, 2014
PROPERTY:	3808-16 MORRISON ST, NW

STATEMENT OF THE PARTY IN SUPPORT

INTRODUCTION

PNC Bank National Association (the "Applicant") has applied for a special exception at 3808-3816 Morrison Street NW, also known as Lot 95 in Square 1859 (the "Property") to allow the continued use of 27 accessory parking spaces in the R-2 zoned western portion of the site to serve the PNC Bank branch on the C-1 zoned eastern portion of the site (the "Application"). Chevy Chase Arcade, LLC (referred to as "CCA") seeks (1) approval of its party status request, as the owner of both the adjacent property and of property rights in a perpetual easement over a portion of the Property; and (2) amendment of the Application to include CCA's continued longstanding trash storage and pick-up on the Property.

EXHIBITS

Exhibit A	Form 140 Party Status Request
Exhibit B	Diagram of Easement Area
Exhibit C	Photographs of Easement Area

REQUEST FOR PARTY STATUS

Pursuant to 11 DCMR §3106, CCA hereby requests to appear and participate as a party in support of Application No. 18799. *See* Form 140 Party Status Request at Exhibit A. CCA is the owner of the adjacent property to the southeast at 5520-5522 Connecticut Avenue, NW also known as Lot 74 in Square 1859 (the "Adjacent Property"). For the following reasons, the CCA will be significantly and uniquely affected by the zoning relief requested at the Property.

CCA is a party to a perpetual easement agreement permitting use of a portion of the Applicant's Property dating back to 1947, pursuant to the Agreement dated March 21, 1947 and recorded in the land record for the District of Columbia on April 11, 1947 as Instrument Number 15864. CCA, and its

respective tenants, have a long history of storing, loading, and removing trash in the easement location. Granting only the relief requested, namely for continued use of the 27 accessory parking spaces without reference to storage and removal of trash, would be detrimental to CCA.

CCA would be particularly affected by this Application being approved without inclusion of the trash storage and removal because CCA has continuously benefited from that use for over 67 years. Furthermore, CCA's current restaurant tenant, Macon Bistro & Larder, would be significantly affected more than the general public due to its use and operation. Still in the risky early months of operation, loss of the subject trash storage and removal area would require expensive and frequent trash removal and loss of floor area. Loss of the restaurant tenant would have severe negative financial implications for the CCA, as it has finally found a tenant after a substantial duration of vacancy. The impacts of the zoning relief sought are unique in character and kind to CCA as the adjacent property owner and as the owner of a perpetual easement on the Property that is the subject of the zoning relief sought.

For the reasons stated above, and in accordance with Form 140, Chevy Chase Arcade, LLC respectfully requests that its party status request be granted.

STATEMENT OF CHEVY CHASE ARCADE, LLC

The Application before the Board is to allow continued use of twenty-seven accessory parking spaces are located on the western portion of the Property. The area has been used for accessory parking for the Property for approximately 67 years. The Applicant uses the easement area, which is part of the accessory parking lot, for accessory uses not specifically described in the special exception Application. We request that the Board accept our request to expand the uses identified in the Application to include trash storage and removal for the benefit of CCA and its tenants.

The Chevy Chase Arcade at 5520 Connecticut Avenue is located next door to PNC Bank at 5530 Connecticut Avenue, NW. Both businesses are located on commercially zoned lots fronting on Connecticut Avenue but with the rear of the properties abutting the R-2 Zone. The lots do not share a party wall but there is no space between the walls of the buildings for access to the rear of the lots.

CCA owns property rights in a perpetual easement over a 248 square foot portion of the Applicant's Property ("Easement Area"). See Diagram of Easement Area at Exhibit B and Photographs of Easement Area at Exhibit C. The easement was recorded on April 11, 1947, one year before the initial special exception for the parking lot as an accessory use was filed and 11 years before the existence of the 1958 zoning code. CCA has used the Easement Area for ingress and egress as well as for trash storage and removal. PNC Bank was not the owner of the Property in 1947 when the easement was created and did not acquire its branch in Chevy Chase, DC until it acquired Riggs National Bank in 2005. The accessory parking space use was originally approved by the Board of Zoning Adjustment by BZA Appeal No. 2124, dated May 20, 1948. The Board subsequently expanded and extended this order pursuant to BZA Order Nos. 4927, 5665, 9053, 11726, 13002, 13520, 14484, 14768, and 15920. In BZA Order No. 16359, dated July 8, 1998, and effective July 27, 1998, the Board granted the most recent extension of the accessory parking space use on the Property for a period of ten years. Since PNC Bank's ownership, they have not been before the BZA regarding the accessory parking lot.

We are unaware as to why the above referenced orders do not include or make reference to the trash storage or pickup. The trash storage and collection may continue as an existing nonconforming accessory use however, due to recent community focus on the restaurant, CCA received notification that the use is non-conforming and relief is necessary.¹ The recent zoning enforcement notification stems from community outreach in response to Macon Bistro & Larder applying for a liquor license in early 2014. Hearings were held before the local ANC and the ANC supported the ABRA application. The liquor license has since been issued and the restaurant is open.

This Board has granted zoning relief on several occasions to allow trash storage and pick up by commercial establishments that are located within or abut residentially zoned property. See, e.g., BZA Case No. 18494 (continued use of an accessory parking lot in the R-5-B District, accessory to restaurant,

¹ Due to the short time period in which this matter has arisen, we have not yet had the opportunity to meet with the Zoning Administrator to further discuss the enforcement notice.

was permitted subject to a condition that the parking lot be cleaned daily and trash pick-up occur regularly); *see also, e.g.* BZA Case No. 17099 (use of an accessory parking lot in the R-4 District was permitted subject to conditions including implementation of written plan for trash removal from the parking lot).

CCA seeks to continue the trash storage and collection on the Property within the Easement Area, as it has for the last 67 years. Therefore, CCA seeks expansion of the special exception language to specifically include reference to the continued use, pursuant to the 1947 easement, of trash storage, pick-up and removal on the Property.

NO SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD

Inclusion of trash removal and storage on the Easement Area owned by Chevy Chase Arcade, LLC will allow for a substantial benefit to the public good. The long vacant commercial space has been recently occupied by a well-liked restaurant. Licenses for operation of the restaurant have been approved by the ANC. Inclusion of trash removal and storage in the special exception language allows for the continued use of the Adjacent Property as a restaurant. During the 67 years of using the Easement Area for trash storage and removal, CCA is not aware of any negative effects or issues. Furthermore, the alternative location of the trash along Connecticut Avenue creates conflicts with traffic, pedestrians, and bicyclists and presents safety concerns.

Despite having no obligation to do so, the Chevy Chase Arcade submitted to the ANC a proposed list of self-imposed restrictions to assure sanitation and minimize annoyance. Those conditions are as follows:

1. CCA will use commercially reasonable efforts to ensure that commercial trash removal occurs after 9:30 a.m. and before 5:00 p.m. CCA will not dispose of garbage after 11:00 p.m. nor dispose of bottle trash and recyclables after 9 p.m.
2. The garbage container/dumpster shall remain at the easement location identified on the site plan.
3. Fencing similar to that of PNC Bank's fencing shall be provided around the trash/refuse dumpsters area equal in height to the dumpsters or six feet (6').
4. CCA shall provide vermin abatement, as needed.

5. CCA will ensure that the area around the dumpsters is kept clean at all times, and that no trash is placed on abutting residential property.
6. CCA will contract to have trash/dumpster pickup by a commercial hauler as frequently as necessary to prevent dumpsters from overflowing. For the initial six months of operation, CCA will contract to have trash removed six days per week. Following that period, the frequency of pickup may be modified if the CCA can demonstrate that a modified schedule is warranted.
7. CCA will ensure that all garbage is securely contained in dumpsters that are rodent-resistant and shall see that dumpster covers fit properly and remain fully closed and locked except for such times when trash and garbage is being added or removed. CCA will not place trash in its dumpsters in any manner that would prevent the full closure of the dumpster and will ensure that all dumpsters used are properly maintained and replaced when damaged.
8. CCA will require its tenant, Macon Bistro, to prohibit its employees from taking breaks in the public alley or area near the premises' basement entrance to the alleyway, will prohibit loitering by employees in this area and will prohibit smoking by employees in these areas.

CCA submits that continuing to store trash and pick up at the current location, having occurred for much of the last century without issue, will serve as a benefit rather than a detriment to the surrounding neighborhood.

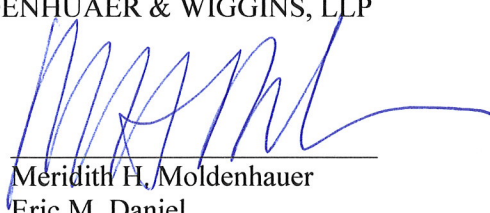
CONCLUSION

In conclusion, CCA seeks (1) approval of its party status request, as the owner of both the adjacent property and of property rights in a perpetual easement over a portion of the Property; and (2) amendment of the Application to include CCA's continued longstanding trash storage and pick-up on the Property.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHUAER & WIGGINS, LLP

By:



Meridith H. Moldenhauer
Eric M. Daniel
1912 Sunderland Place, NW
Washington, DC 20036
(202) 429-9000

Exhibit A

BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

FORM 140 - PARTY STATUS REQUEST

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated. All information must be completely filled out.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.
(Please see reverse side for more information about this distinction.)

Pursuant to 11 DCMR §§ 3022.3 or 3106.2, a request is hereby made, the details of which are as follows:

Name:	Chevy Chase Arcade, LLC		
Address:	5520 Connecticut Ave. NW. Washington DC 20015		
Phone No(s):	202-429-9000	E Mail:	mmoldenhauer@washlaw.com
I hereby request to appear and participate as a party in Case No.:		18799	
Signature:		Date:	July 7, 2014
Will you appear as a(n)	☒ Proponent ☐ Opponent	Will you appear through legal counsel?	☒ Yes ☐ No

If yes, please enter the name and address of such legal counsel.

Name:	Griffin Murphy Moldenhauer & Wiggins LLP		
Address:	1912 Sunderland Pl. NW. Washington DC 20036		
Phone No(s):	202-429-9000	E Mail:	mmoldenhauer@washlaw.com

PARTY WITNESS INFORMATION

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the party's behalf;
2. A summary of the testimony of each witness (*Zoning Commission only*);
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (*Zoning Commission only*); and
4. The total amount of time being requested to present your case (*Zoning Commission only*).

PARTY STATUS CRITERIA

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board? **See Statement of Party in Support attached**
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee) **See Statement of Party in Support attached**
3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.) **See Statement of Party in Support attached**
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied? **See Statement of Party in Support attached**
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied. **See Statement of Party in Support attached**
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public. **See Statement of Party in Support attached**

Except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Commission/Board, any affected person shall file with the Zoning Commission or Board of Zoning Adjustment, this Form 140 not less than fourteen (14) days prior to the date set for the hearing.

Exhibit B

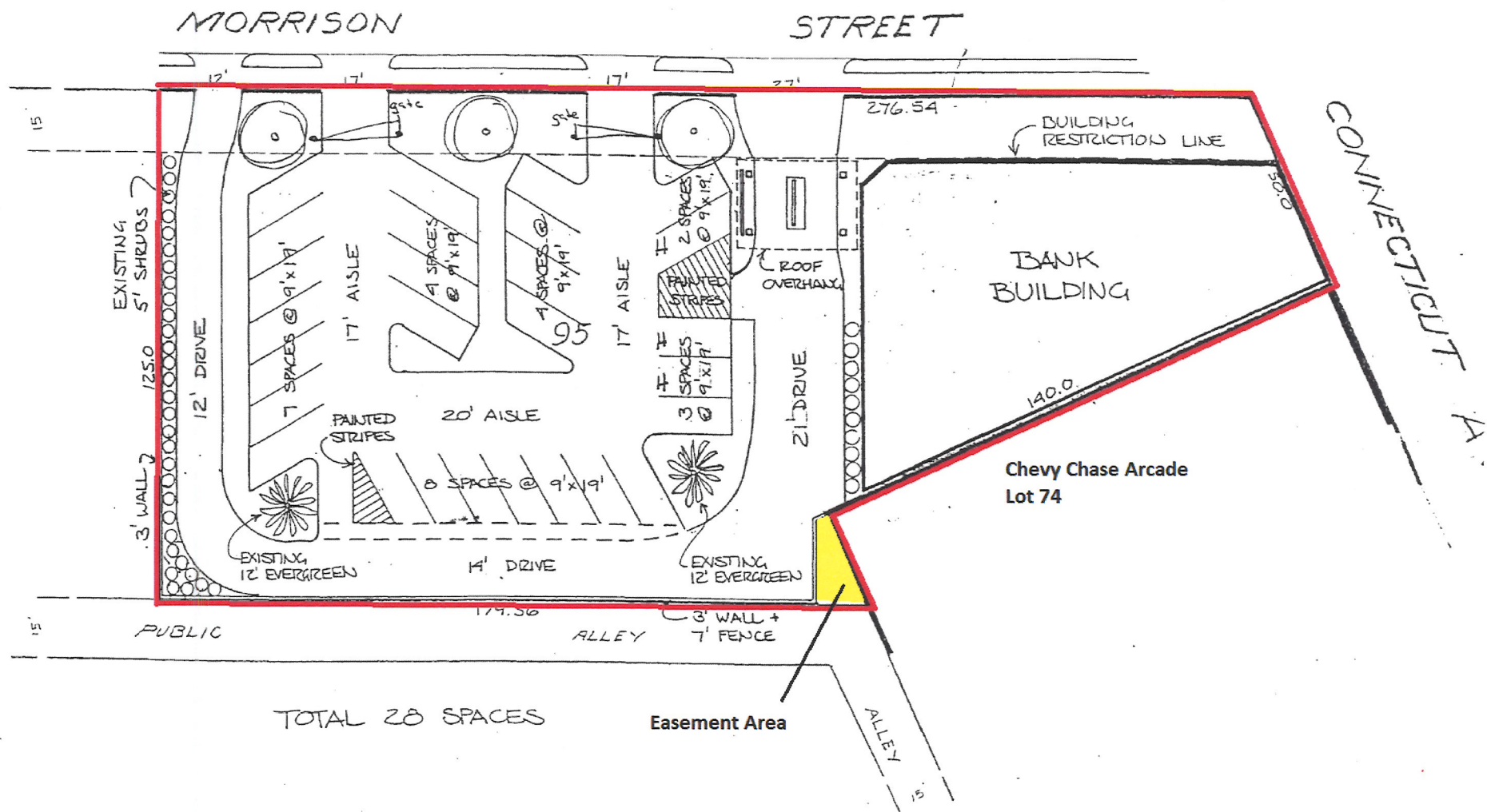


Exhibit C

Photographs of Easement Area

