

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

**Application of PNC Bank National Assoc.  
3808-16 Morrison Street, N.W.  
(Square 1859, Lot 95)**

**PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF**

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This statement is submitted on behalf of PNC Bank National Assoc. (the "Applicant"), owner<sup>1</sup> of the property located at 3808-16 Morrison Street, N.W., Square 1859, Lot 95 (the "Site"), in support of its application pursuant to 11 DCMR § 3104 for a special exception under Section 214 to allow continued use of the 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.

Square 1859 is bounded by McKinley Street to the north, Connecticut Avenue to the east, Livingston Street to the South and 39<sup>th</sup> Street to the west, all located in the northwest quadrant of the city. The Site is bounded by Morrison Street to the north, Connecticut Avenue to the east, private property to the southeast and west, and a public alley to the south. The Site contains 30,348 square feet of land area, with 50 feet of linear frontage on Connecticut Avenue, N.W. and 276.5 square feet of linear frontage on Morrison Street, N.W.

**I. Prior BZA Approvals**

Twenty-seven accessory parking spaces are located on the western portion of the Site, which has been used for accessory parking for the bank for approximately 66 years. 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 Site for a period of ten years.

The Applicant understands that recently, one or more residential neighbors have expressed concern to the Zoning Administrator over late night noise generated by restaurant and bar patrons and employees who use the Site without authorization to do so. The Zoning Administrator's investigation revealed that the prior BZA approval for the accessory parking space use had expired.<sup>2</sup> Upon notice from the Zoning Administrator, the Applicant immediately contacted that office, through Counsel, and is working with that office to develop appropriate

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<sup>1</sup> PNC Bank National Association acquired Riggs Bank, N.A., the prior owner of the Site, in May, 2006.

<sup>2</sup> Despite its good intentions, the Applicant neglected to timely apply for another special exception for the accessory parking space use in 2008. This oversight was a result of a change in bank ownership, and a transfer of responsibilities within the organization and unintentional administrative oversight.

measures to prevent night time use of the lot, pending completion of the Board's review of this application.

## **II. Burden of Proof**

In order for the Applicant to continue the existing accessory parking space use, special exception relief is required under § 214 of the Zoning Regulations. A special exception use is deemed compatible with other uses permitted in a particular zoning classification provided that the specific regulatory requirements are met. If the Applicant meets its burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695 (1981).

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no less than 14 days prior to the public hearing on this Application. In the Statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested special exception. The following is a summary statement indicating how the Applicant will meet its burden of proof.

### **A. Section 214**

Pursuant to Section 214.1 of the Zoning Regulations, accessory passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which any principal R-1 use is permitted, except for a one-family dwelling, shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment under Section 3104. Section 302 of the Zoning Regulations makes Section 214 applicable to accessory parking spaces located in R-2 Districts. As set forth herein, the Site is in compliance with Section 214:

**1. § 214.2** - *Accessory parking spaces shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade.*

The portion of the Site dedicated to accessory parking spaces is an open area to the west of the PNC bank building. No portion of this area extends above the level of the adjacent finished grade.

**2. § 214.3** - *Accessory parking spaces shall be located in their entirety within two hundred feet (200 ft.) of the area to which they are necessary.*

As indicated in the plat included with the application, the accessory parking spaces are located in their entirety within approximately 150 feet of the bank building.

**3. § 214.4** - *Accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.*

The accessory parking spaces on the Site are contiguous to the bank building on its west side.

4. **§ 214.5** - *All provisions of chapter 23 of this title regulating parking lots shall be complied with, except that the Board may in an appropriate case under § 2303.3 modify or waive the conditions specified in § 2303.2 where compliance would serve no useful purpose.*

All relevant portions of chapter 23 will be complied with, as further detailed below.

5. **§ 214.6** - *It shall be deemed economically impractical or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted.*

The parking spaces are on the same lot as the bank building. It is economically impractical to locate the accessory parking spaces within the building or on the C-1 portion of the lot because of strip zoning. The C-1 zone is only approximately 100 ft. deep at this location, and is fully occupied by the bank building. The bank building would need to be demolished, and an accessory parking garage installed beneath a new bank building, in order to provide the accessory parking spaces for the bank on the C-1 portion of the Site.

6. **§ 214.7** - *Accessory parking spaces shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions.*

The continued use of the western portion of the Site for accessory parking spaces is not likely to become objectionable to adjoining or nearby properties. In response to recent complaints about nighttime noise from unauthorized use of the lot, the Applicant will supplement its existing signage with additional enforcement mechanisms to help ensure that nighttime use does not occur on the lot.

7. **§ 214.8** - *Before taking final action on an application for use as an accessory parking space, the Board shall submit the application to the D.C. Department of Transportation for review and report.*

The application will be submitted to the D.C. Department of Transportation ("DDOT") for review and report.

**B. Section 2303.1**

1. **§ 2303.1(a)** - *All areas devoted to driveways, access lanes, and parking areas shall be surfaced and maintained with an all-weather surface. In addition to traditional impervious surfaces, allowable all weather surfaces include porous (or pervious) concrete, porous asphalt, and/or mechanically-reinforced grass, excluding grass or gravel.*

The parking lot is paved with material forming an all-weather impervious surface.

2. **§ 2303.1(b)** - *The parking lot shall be designed so that no vehicle or any part of a vehicle projects over any lot line or building line.*

The parking lot is designed so that no vehicle or part of a vehicle projects over any lot or building line. The parking lot is separated from the east lot line by a 21 foot ATM drive-through

lane and the bank building. The lot is separated from the south and west lot lines by 14 foot and 12 foot drive aisles, respectively. There is a 15 foot building restriction line along Morrison Street to the north. This area is landscaped, and the lot is designed such that no vehicle or part of a vehicle projects over the building restriction line.

**(3) § 2303.1(c)** - *No other use shall be conducted from or upon the premises, and no structure other than an attendant's shelter shall be erected or used upon the premises unless the use or structure is otherwise permitted in the district in which the parking lot is located.*

The lot is used exclusively for parking.

**(4) § 2303.1(d)** - *No vehicular entrance or exit shall be within forty feet (40 ft.) of a street intersection as measured from the intersection of the curb lines extended.*

No vehicular entrance or exit is located within 40 feet of a street intersection as measured from the intersection of the curb lines extended.

**(5) § 2303.1(e)** - *Any lighting used to illuminate a parking lot or its accessory buildings shall be arranged so that all direct rays of the lighting are confined to the surface of the parking lot.*

All direct rays of lighting are confined to the surface of the parking lot.

**(6) § 2303.1(f)** - *The parking lot shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. Landscaping with trees and shrubs shall cover a minimum of five percent (5%) of the total area of the parking lot, or an area as determined by the Board of Zoning Adjustment for a parking lot otherwise requiring Board approval.*

The parking lot is kept free of refuse and debris and is landscaped with grass, trees, and shrubs. The amount of landscaping on the site exceeds the five percent landscaping requirement.

**(7) § 2303.2** - *In addition to the requirements of § 2303.1, a parking lot located in an R-1, R-2, R-3, R-4, or R-5-A District, and a parking lot located in any other district where such parking lot is contiguous to an R-1, R-2, R-3, R-4, or R-5-A District, shall be screened from all contiguous residential property located in the R-1, R-2, R-3, R-4, or R-5-A District by a solid brick or stone wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high or by evergreen hedges or evergreen trees that are thickly planted and maintained and at least forty-two inches (42 in.) in height when planted.*

**(a)** *The parking lot shall be screened from all contiguous residential property located in an R-1, R-2, or R-3 District by a solid masonry wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high; and*

**(b)** *All parts of the lot not devoted to parking areas, driveways, access lanes, attendant's shelter, or required screening walls shall be kept free of refuse and debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.*

The residential use on Lot 70 is contiguous to the Site and is located directly to the west. The Site is separated from residential properties to the south by a 15 foot public alley. The accessory parking lot is screened from Lot 70 by a 36 inch high, 12 inch thick masonry wall and evergreen hedges that are thickly planted and maintained at a minimum height of approximately five feet. The wall is located to the west of the hedges and is barely visible from the Site, due to the hedge's growth above and around the wall. The lot is screened from the alley and the residential properties to the south by a 36-inch high masonry wall with a seven foot high solid wooden fence on top. This screening around the west and south perimeter of the lot has existed for many years. All parts of the accessory parking lot are kept free of refuse and debris and are paved or landscaped. All landscaping on the Site is maintained in a healthy growing condition and in a neat and orderly appearance.

**(8) § 2303.3** - *If approved by the Board of Zoning Adjustment as a special exception under § 3104, the conditions in § 2303.2 may be waived or modified.*

The Applicant requests a continuation of the modification from § 2303.2 with respect to the height of the masonry wall that separates the Site from the adjacent residential property to the west and south. Section 2303.2(a) requires the masonry wall to be a minimum of 42 inches in height; however, the existing wall on the western and southern boundaries of the Site is and always has been 36 inches in height. The evergreen hedges between the wall and the lot are thickly planted and rise to a height significantly taller than 42 inches, and the wooden fence on top of the 36 inch wall to the south is seven feet high.

**(9) § 2303.4** - *Before authorizing a waiver or modification, the Board shall consider:*

- (a) The adequacy of protective and screening walls located on adjacent residential property;*
- (b) Topographic and traffic conditions; and*
- (c) Any adverse effect the requested waiver or modification of standards may have on adjacent residential property.*

There have been no changes with regard to the physical conditions or operational character of the parking lot since the last Board approval pursuant to Order No. 16359. The existing evergreen hedges on the Site provide adequate screening from the residential property to the west.

**(10) § 2303.5** - *The Board may require any special treatment of the premises that it deems necessary to protect the value of adjacent property.*

The Applicant has continued to comply with the conditions of the approval specified in the last Order (No. 16359). The Applicant is committed to continuing to operate the parking lot in a manner so as to protect the value of the adjacent property.

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