

BOARD OF ZONING ADJUSTMENT
SPECIAL EXCEPTION APPLICATION

PREHEARING STATEMENT

Hwa Golden (Owner/Applicant)
6400 Georgia Ave., N.W.; Square 2945, Lot 852

I. INTRODUCTION.

This prehearing statement is offered in support of Application No. 18925 (the "Application") of Hwa Golden to re-establish the special exception approval for an existing parking lot (the "Parking Lot") located across the alley from the commercial building at 6400 Georgia Avenue, NW. The Parking Lot, located on Lot 852 in Square 2945, fronts on the north side of Tuckerman Street, NW, adjacent to Tuckerman's intersection with Georgia Avenue and Piney Branch Rd. The Property is located in the R-1-B Zone District. The Parking Lot has been operated as an accessory parking lot with forty (40) parking spaces since the early 1950s, at least. From the BZA records we were able to locate, the BZA approved the use of the Parking Lot for accessory parking in 1974, 1977, 1982, and again in 1989. These approvals were granted pursuant to Section 213 of the District of Columbia Zoning Regulations, which is the section that the Applicant requested approval under in her initial Applicant's Statement; however, after discussions with the Zoning Administrator, the Applicant hereby requests leave to amend the Application to seek approval under Section 214 of the District of Columbia Zoning Regulations.

The Parking Lot is used by the retail and office tenants of the commercial building located at 6400 Georgia Ave., N.W. The Applicant requests approval to continue operation of the Parking Lot under the conditions included in a Voluntary Agreement between the Applicant and ANC 4A, signed and dated, and adopted by the ANC, on March 3, 2015.

II. DESCRIPTION OF THE PROPERTY AND SURROUNDING NEIGHBORHOOD.

The Parking Lot is located to the rear of 6400 Georgia Ave., N.W., across a public alley. To the west and north of the Parking Lot are residential neighborhoods. The residential neighborhood to the north of the Parking Lot is buffered from the Parking Lot by a public alley and a chain-link fence. The residential neighborhood to the west of the Parking Lot is buffered

from the Parking Lot by a brick wall and an empty lot with mature trees and shrubbery. Photos of the parking lot and surrounding area are attached hereto as Exhibit A.

III. BZA SPECIAL EXCEPTION HISTORY.

As set forth in BZA Order 12253, the Parking Lot has been used for accessory parking spaces since at least the early 1950s. The Board of Zoning Adjustment granted the continued use of the Parking Lot for accessory parking spaces in 1974, 1977, 1982, and 1989. These approvals were granted with various conditions. The approval in the 1989 BZA Order was granted for a period of five (5) years. This approval expired on November 7, 1994. While the number of parking spaces in previous BZA Orders ranges from thirty-three (33) to forty-two (42), as the Parking Lot is currently operating with forty (40) spaces, the Applicant is requesting an approval for forty (40) spaces. The Applicant has owned the Parking Lot since 2004 and just recently became aware of the zoning restrictions on the Parking Lot and the need for special exception relief. In the Applicant's Statement, we stated that we had no knowledge of complaints regarding the Parking Lot. We have since learned that the neighbor across the alley, Mr. Matthew Dunn, has had complaints about the Parking Lot. In particular, he has complained about illegal dumping on the site by outsiders, and the Applicant's removal of those items to the alley, as well as the general condition of the Parking Lot.

In response to Mr. Dunn's concerns, the Applicant installed a chain-link fence around the northern and eastern borders of the Parking Lot, and installed lockable gates at the entrance on Tuckerman, with the expectation that these new structures will prevent the practice of illegally dumping materials on the Parking Lot. The Applicant has also taken steps to clean up the empty lot to the west of the Parking Lot (half of which is also part of Lot 852), and has agreed to repair the existing brick wall on the west side of the Property and repair existing potholes on the surface of the Parking Lot. The Applicant will continue to work with Mr. Dunn, who generously attended the ANC meeting on March 3 to speak in support of the Application, contingent on the conditions included in the Voluntary Agreement, including a five-year approval.

IV. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SECTIONS 3104 AND 214.

A. Overview.

Pursuant to Section 3104.1 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for relief under Section 214 of the Zoning Regulations.

Uses that are permitted by special exception are deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000). This application provides satisfactory evidence that the Applicant has satisfied the relevant zoning requirements of Sections 214 and 3104.1, as described below.

B. The Special Exception Requirements.

The proposal in this application satisfies the requirements of Sections 214 and 3104.1 of the Zoning Regulations necessary to approve the proposed use of forty (40) accessory parking spaces, as follows:

Section 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 Parking Lot is located in an open area.

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

The Parking Lot is safely within 200 feet of the commercial establishments located at 6400 Georgia Ave., NW to which the Parking Lot is accessory, as shown on the attached Exhibit B.

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

The Parking Lot is separated only by an alley to the commercial establishments located at 6400 Georgia Ave., N.W. to which the Parking Lot is an accessory, as shown on the aerial photo attached as Exhibit A and the attached Exhibit C.

Section 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.*

This Application meets the requirements of Chapter 23 of the Zoning Regulations regarding parking lots.

Regarding 2303.1:

- (a) the Parking Lot is surfaced and maintained with an all-weather surface of asphalt;
- (b) no parking spaces project over any lot line or building line;
- (c) no other use is conducted on the Parking Lot;
- (d) the entrance to the Parking Lot is more than 40 feet from the intersection of Tuckerman Street NW and Piney Branch Road NW;
- (e) any lighting is directed down to the surface of the Parking Lot; and
- (f) the Parking Lot is kept free of debris and refuse, and is landscaped in areas which require it.

Regarding 2303.2:

- (a) the west side of the Parking Lot is screened from the contiguous residential property by a solid brick wall that is at least twelve (12) inches thick and forty-two (42) inches high;

(b) all parts of the Parking Lot not devoted to parking areas, driveways, access lanes, an attendant's shelter, or the required screening walls, are kept free of refuse and debris and are landscaped in areas which require it.

Section 214.6 *It shall be deemed economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of the following:*

- (a) *Strip zoning or shallow zoning depth;*
- (b) *Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot;*
- (c) *Unusual topography grades, shape, size, or dimensions of the lot;*
- (d) *The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets; or*
- (e) *Traffic hazards caused by unusual street grades or other conditions.*

The building at 6400 Georgia Avenue occupies 100% of its lot, and therefore no parking can be provided on the same lot as the accessory commercial uses there.

Section 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 Parking Lot has separate lanes for the entrance and exit from Tuckerman Street NW and one-way circulation around the lot. The Parking Lot is buffered from the adjacent residential zone by a public alley, a brick wall, a chain link fence, and an empty lot. The Parking Lot has been used for at least sixty (60) years and provides valuable parking for the commercial establishments which the Parking Lot serves, providing an outlet for cars which might otherwise park in the adjacent residential neighborhood.

Section 3104.1 *Special Exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.*

Because the Parking Lot is well-buffered from the adjacent residential zone, provides valuable parking, serves to relieve overspill parking into neighborhoods, and has existed in the neighborhood for the past 60+ years, the special exception relief will not tend to adversely affect the use of neighboring property. In addition, the Applicant has agreed to the conditions requested by ANC 4A, as noted in the Voluntary Agreement, a copy of which is attached hereto as Exhibit D.

V. Conclusion.

For the reasons stated above, this application meets the requirements for special exception approval by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,


Dina Munasifi, Esq.
Martin Sullivan, Esq.
March 17, 2015

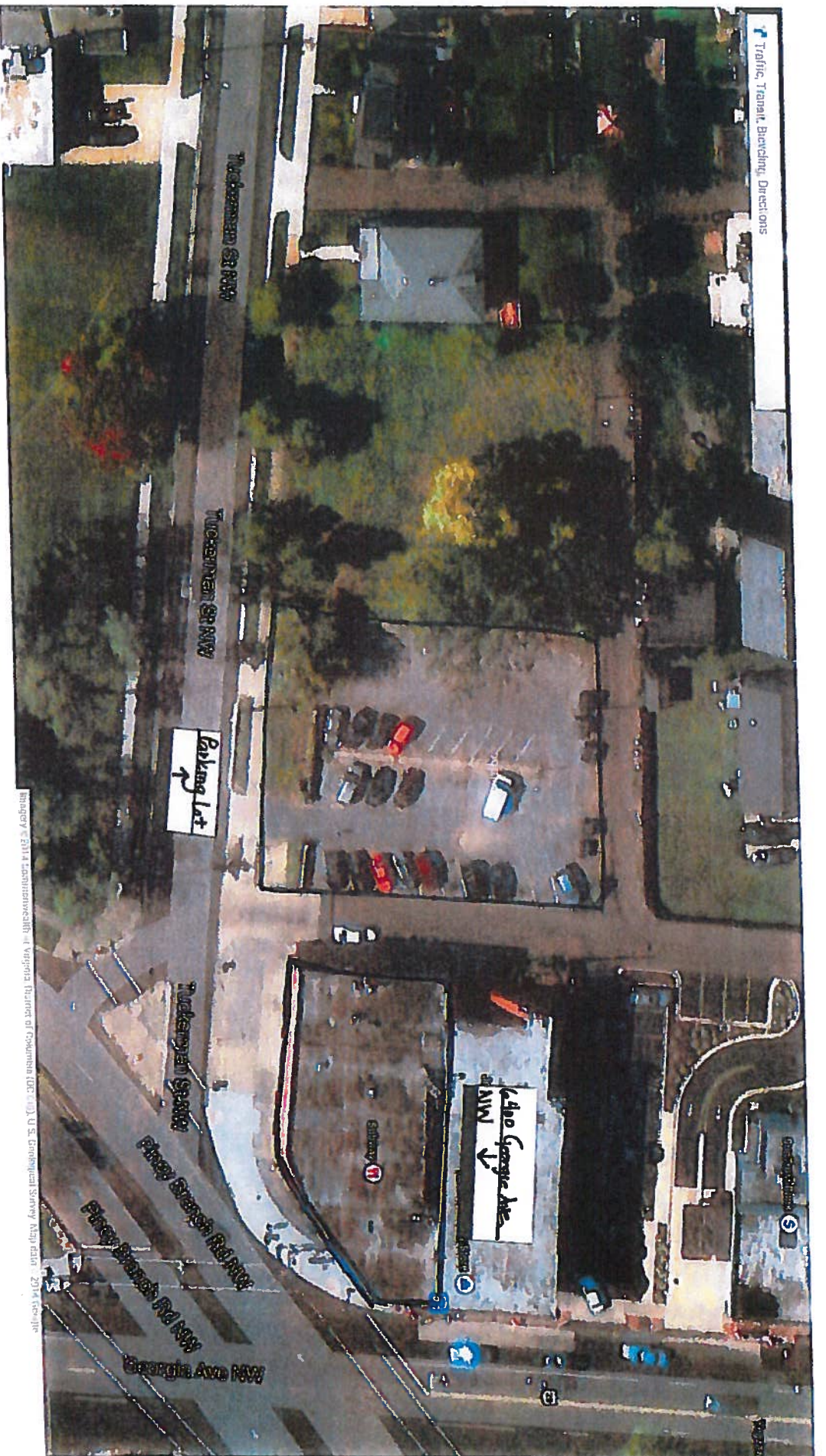


EXHIBIT A



Parking Lot Entrance



Parking Lot Exit



Rear of the Parking Lot Facing a Public Alley



Rear of the Parking Lot Facing a Public Alley



Brick Wall on the Western Boundary of the Parking Lot



**Parking Lot Exit
(View Facing Tuckerman Street NW)**



Brick Wall on the Western Boundary of the Parking Lot



Brick Wall on the Western Boundary of the Parking Lot



**Parking Lot Exit
(View Facing Tuckerman Street NW)**



Parking Lot Signage



Parking Lot Exit



**Parking Spaces Within the Parking Lot
(View Facing Tuckerman Street NW)**



**View from Rear of Parking Lot
(Facing Tuckerman Street NW)**

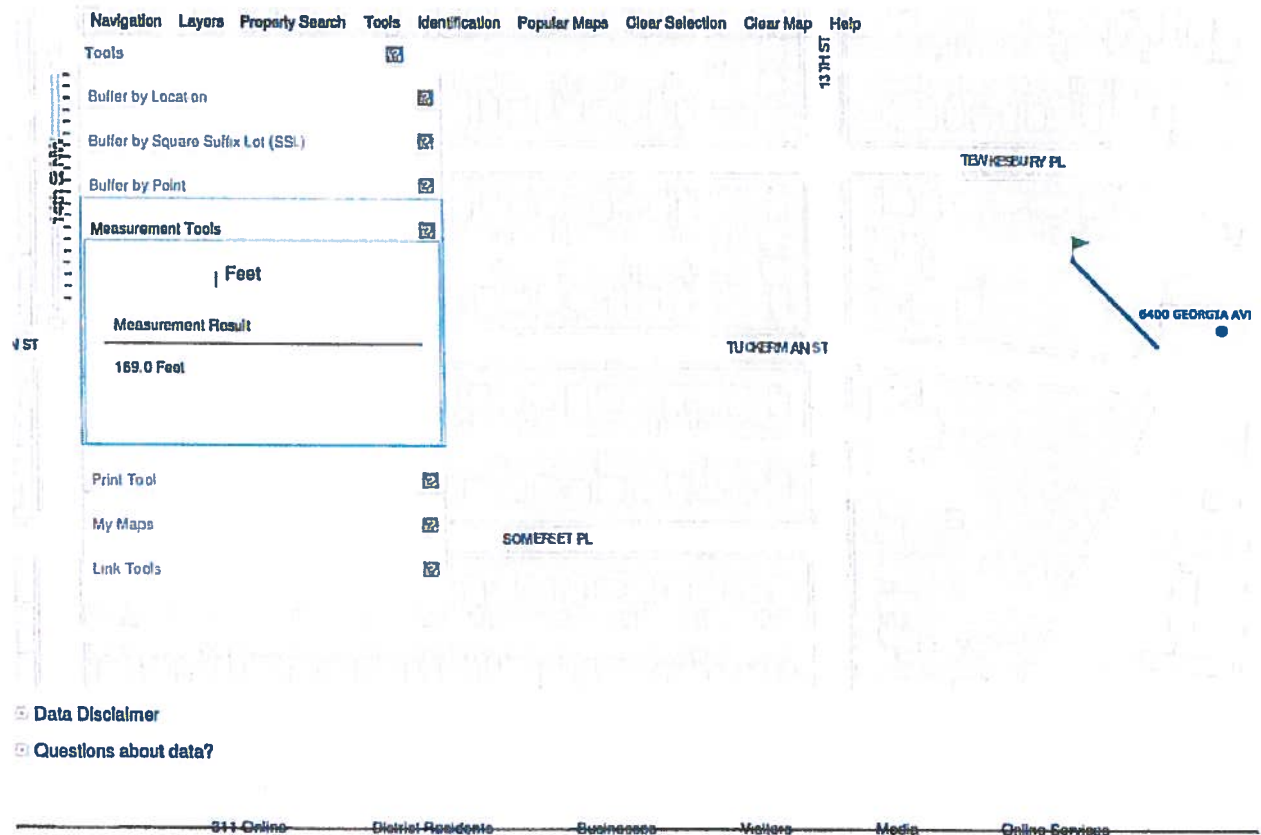


EXHIBIT B

Distance of 169 feet from the far edge of the parking lot to the commercial building located at 6400 Georgia Ave. NW



While DCOZ is committed to providing accurate and timely zoning information via the zoning map, DCOZ cannot guarantee the quality, content, accuracy or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be considered approximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or other professional advice. DCOZ assumes no liability for any errors, omissions, or inaccuracies in information provided regardless of the cause of such error or any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCOZ retains the right to change any content on its zoning map without prior notice.

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DC Office of Zoning

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EXHIBIT C

Zoning Data Summary*	
Square/Suffix/Lot	2945 / D/A / 0852
Premises Address	TUCKERMAN ST NW
Zoning District(s)	R-1-B
Overlay District(s)	
Pending Zoning District(s)	
Pending Overlay District(s)	
PUDs	None
Pending PUDs	None
Ward	4
Council Member	Muriel Bowser
ANC	4A
ANC Chairperson	Karye Y. Braxton
SMD	4A04
Commissioner	Marian C. Bennett

* For a detailed explanation of zoning related terms, please refer to the DC Zoning Map Glossary available at http://maps.dcoz.dc.gov/css/Map_App_User_Guide/Glossary.pdf.

** To the extent an active PUD exists on a particular site, the PUD zoning depicts the zoning in effect for that site.

VOLUNTARY AGREEMENT

THIS VOLUNTARY AGREEMENT ("Agreement") is made on this ____ day of _____, 2015, by and between Hwa Golden ("Applicant"), owner of the parking lot located behind 6400 Georgia Avenue, NW, Washington, DC 20012 and Advisory Neighborhood Commission 4A ("ANC 4A") (collectively, the "Parties").

WHEREAS, Applicant has applied for special exception relief to the D.C. Board of Zoning Adjustment pursuant to Sections 3104 and 214 of the Zoning Regulations (the "BZA Application"), to re-establish and continue the lawful use as a parking lot (the "Parking Lot") of the property known as a portion of Lot 852 in Square 2945, located to the west across a public alley from 6400 Georgia Avenue, NW (the "Subject Property");

WHEREAS, ANC 4A, on behalf of its residents and businesses, wishes to secure from the Applicant certain assurances for the maintenance and operation of the Parking Lot, in exchange for ANC 4A's formal support of the Application before the BZA; and

WHEREAS, the Parties have agreed to enter into this Agreement and request that the D.C. Board of Zoning Adjustment approve the Application conditioned upon the Applicant's compliance with the terms of this written Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

1. ***Recitals Incorporated.*** The recitals set forth above are incorporated herein by reference.
2. ***Nature of the Applicant's Operation.*** Applicant will operate and maintain the Parking Lot in a way which does not have a substantially adverse effect on adjacent properties.
3. ***Hours of Operation.*** The Parking Lot's hours of operation shall be as follows:

Monday through Saturday: 7 a.m. – 9 p.m.

Sunday - Closed

The Applicant shall make a good-faith effort to close and lock the gates to the Parking Lot entrance on a nightly basis, in an attempt to limit the illegal dumping which has been known to happen on the Parking Lot.

4. ***Parking Lot Surface Repair.*** Prior to receiving a certificate of occupancy for the Parking Lot, Applicant shall repair the surface of the Parking Lot by filling in potholes, removing and replacing loose asphalt, repairing or replacing any damaged wheel stops, and re-painting the lines for the parking spaces on the Parking Lot.
5. ***Lighting.*** Any lighting on the Parking Lot shall be directed inward to the Parking Lot, and shall not project outward toward the residential zone to the north of the Parking Lot.

EXHIBIT D

6. **Wall Repair.** Prior to receiving the certificate of occupancy, the Applicant shall repair the cap on the western side of the existing brick wall, and shall repair other sections of the wall in need of repair.
7. **Lot Landscaping and Clean-up.** In lieu of the 5% landscaping requirement for parking lots, the Applicant shall clean, and maintain the open space adjacent to the Parking Lot to the west (the remainder of Lot 852) ("Open Space"), for as long as Applicant owns such space. Prior to receiving a certificate of occupancy, Applicant shall remove any asphalt, mortar, or bricks on the Open Space and shall inspect the Open Space on a regular basis to ensure that the Open Space remains free of this or other trash or inorganic material.
8. **Fencing.** ANC 4A acknowledges that Applicant has already erected a fence along the north and east sides of the Parking Lot, in response to neighbor concerns about illegal dumping and blocking the alley off from the dumpsters and the Parking Lot. Applicant agrees to maintain this fence for the life of the Parking Lot.
9. **Dumpsters.** ANC 4A acknowledges that the Parking Lot is accessory to various uses, including Papa John's and Subway, which produce a fair amount of refuse, and that Applicant's lot containing those uses is built to 100% lot occupancy, making it necessary that Applicant locate dumpsters on the Parking Lot rather than on the lot at 6400 Georgia Avenue, NW. Applicant also agrees that trash pick-up for each dumpster occurs twice weekly, but in any event the frequency of pick-up for all dumpsters will be adequate to match the level of refuse being deposited in each dumpster, so that dumpsters do not overflow.
10. **Illegal Dumping.** ANC 4A acknowledges that illegal dumping on the Parking Lot has occurred, which is not the fault of Applicant, but believes that Applicant's construction of the fence, the entrance gate, and other assurances, provide a significant deterrence to such illegal dumping. Applicant agrees that if illegal dumping does occur on the Parking Lot, that Applicant will use her best efforts to cause the removal of such materials in a timely manner and will not relocate such materials to the public alley to the north of the Parking Lot. If Applicant does not dispose of the dumped materials herself, she shall, as soon as possible after discovering the dumped materials, call the District's Department of Public Works to request assistance in removing the dumped materials.
11. **Time Period.** In consideration for the work already undertaken by Applicant and the promises herein made by Applicant, in conjunction with the execution of this Agreement, ANC 4A agrees to send a letter to the BZA in support of BZA Application No. 18925 of Hwa Golden, with a recommendation that the BZA grant approval for a period of five (5) years.
12. **Notice and opportunity to cure.** In the event that Applicant is in breach of this Agreement, Applicant shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to ANC 4A's seeking enforcement either of the Agreement or from the Zoning Administrator regarding conditions herein incorporated into the BZA Order. Unless the breach is of an emergency nature or is a continued repetition of a prior breach,

reasonable notice and opportunity shall provide for a cure within fifteen (15) days of the date of such notice. If Applicant fails to cure within the fifteen (15)-day period (or, with respect to a breach which reasonably requires more than fifteen (15) days to cure, fails to commence cure of such breach and diligently pursues such cure), failure shall constitute a cause for ANC 4A to seek enforcement of the Agreement or enforcement by the Zoning Administrator of any conditions herein which are incorporated into the BZA Order. Any notices required to be made under this Agreement shall be in writing and mailed via certified mail, return receipt requested postage prepaid, or hand-delivered to the other parties to this Agreement at the following addresses. Notice shall be deemed given as of the date and time of receipt or refusal of receipt:

If to Applicant:	Hwa Golden 2608 Urbana Drive Silver Spring, MD 20906
With a Copy to:	Martin P. Sullivan, Esq. Sullivan & Barros, LLP 1990 M Street, NW, Suite 200 Washington, DC 20036 msullivan@sullivanbarros.com
If to ANC 4A:	ANC 4A 7820 Eastern Avenue, NW Washington, DC 20012

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

ANC 4A:

By: _____

APPLICANT



Hwa Golden