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VIA IZIS AND HAND DELIVERY

D.C. Board of Zoning Adjustment
441 4th Street, NW - Suite 210
Washington, DC 20001

Re: BZA Case No. 18957 – Motion for Reconsideration of Condition #7
411-413 H Street, N.E. (Sq. 809, Lot 69)

Dear Members of the Board:

On behalf of Nando's of H Street, LLC ("Applicant"), we move for reconsideration of Condition No. 7 in Board of Zoning Adjustment ("BZA" or "Board") Order No. 18957 pursuant to 11 DCMR § 3126.2. To the extent the Board deems it necessary, the Applicant seeks a waiver of the ten-day time limit under section 3126.2 for good cause shown as described below.

A. Waiver of the 10-day Deadline for Reconsideration Motions.

BZA Order No. 18957 was issued on March 25, 2015, and mailed to the parties the same day. See Exhibit 37 to the record. Pursuant to 11 DCMR § 3126.2, a motion for reconsideration must be filed within ten days after the order is issued. If the order is served on the parties by mail, three days are added to the time deadline. In this instance, the deadline for this motion would be April 6, 2015. However, the Applicant (through undersigned counsel) did not receive the mailed copy of the order until Thursday, April 2, 2015. Ten days thereafter is April 12, 2015. Thus, we believe this motion is timely because it is submitted only six days after receipt of the order. However, in the event the Board deems it necessary, the Applicant seeks a waiver of the ten-day deadline.

Upon receipt of the order on April 2 by mail, the Applicant reviewed the decision and discovered that Condition No. 7 did not reflect the discussions at the hearing or the deliberations of the Board. The following day, the Applicant attempted to contact the Office of Zoning staff to request an administrative correction to the order. Only after several additional attempts was the Applicant able to confer with staff on Tuesday, April 7. At that time, staff advised the Applicant

that it must pursue a motion for reconsideration, rather than an administrative correct, in order to resolve the issue with Condition No. 7. This motion has been timely filed within one day after conferring with staff and just six days after actual receipt of the order.

Advisory Neighborhood Commission ("ANC") 6C, the only other party to the proceeding, will not be prejudiced by a waiver of the ten-day deadline. Pursuant to section 3126.5, the ANC will still have the seven days to respond to this motion and the Applicant is providing a copy of this request to the ANC by email to ensure prompt delivery and receipt. Consequently, based on the foregoing, the Applicant has demonstrated good cause to accept this motion outside of time, should the Board conclude that it is necessary.

B. Request for Reconsideration of Condition No. 7

As published in the BZA Order, Condition No. 7 provides that:

7. The show windows and associated clerestory for the building at 413 H Street, N.E. shall be restored consistent with those in the H Street Overlay area.

However, this condition does not accurately conform to the information presented by the Applicant or the deliberations by the Board. The ANC recommended seven conditions for the granting of the application, all of which the Applicant accepted except for Condition No. 7. After some discussion, the Board rewrote the condition to say that "the windows need to be consistent with those in the H Street Overlay area." BZA Hearing Transcript ("Tr."), March 24, 2015, at 26. There was no mention of the clerestory, which was one of the elements of the ANC condition that the Applicant could not support.

The ANC had requested that:

- 7. The show windows and associated clerestory for 413 H-recently removed as part of the construction-shall be restored consistent with those present at 415 and 417 H Street N.E., as required by the H Street Overlay design requirements. Section 1325.1(b) requires that for special exception relief in the H Street Overlay District, "[t]he architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located. . . ." Given that 413-417 H Street were constructed as a group with identical facades, and that the show windows and clerestory remain present at the other two properties, restoring these matching elements to the former 413 H Street would "enhance the urban design features" of this historic section of H Street.

Exhibit 26, ANC 6C Letter, March 16, 2015, at 2.

At the hearing, the Applicant explained that the landlord had already obtained a permit to renovate the building, including the front façade, and that the Applicant was only responsible for

the interior fit-out and inserting a new show window in the area now covered with plywood. The Applicant introduced photographs of the building to describe how all historic features characteristic of the triple building (413-417 H Street) would be maintained for the Nando's site at 413 H Street, except for the ground floor window. The Applicant explained that the original historic window had already been removed sometime earlier, and that the proposed contemporary window would be consistent with others in the 300 block of H Street on the north and south sides, and thus consistent with the H Street Overlay. Upon receiving this testimony, the Chairman then reviewed the ANC recommendations and accepted all of them, "except to modify condition number 7 to say that the windows need to be consistent with those in the H Street overlay area." Tr. at 26 (emphasis added).

Consequently, the Applicant requests that Condition No. 7 be corrected to reflect the exact language proposed by the Board during its deliberations.

Respectfully submitted,

Holland & Knight LLP

By: 
Mary Carolyn Brown

Enclosures

cc: Karen Thomas, Office of Planning (Via email)
Karen Wirt, Chair, ANC 6C (via email)
Mark Eckenwiler, ANC 6C04 (via email)
Advisory Neighborhood Commission 6C (via US Mail to post office box address)