

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

**APPLICATION OF JEMAL’S PAPPAS TOMATO’S, L.L.C.
1401 OKIE STREET, N.E.
SQUARE 4093, LOT 832**

PRELIMINARY STATEMENT OF THE APPLICANT

This Preliminary Statement of the Applicant is submitted on behalf of Jemal’s Pappas Tomato’s, L.L.C (the “Applicant”), as owner of property located at 1401 Okie Street, N.E. (Square 4093, Lot 832) (the “Site”), in support of its application to the Board of Zoning Adjustment (“Board” or “BZA”) pursuant to 11 DCMR §§ 3103.2 and 3101.4 for an area variance from the off-street parking requirements of 11 DCMR § 2101.1 and a special exception from the roof structure requirements of 11 DCMR §§ 411.3 and 845.1 to allow the adaptive reuse of an existing warehouse building in the C-M-1 District at the Site.

Pursuant to 11 DCMR § 3113.8, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that 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 relief.

I. Background Information Regarding the Site and Proposed Development

Square 4093 is located in the northeast quadrant of the District and is bounded by Okie Street to the north, 16th Street to the northeast, West Virginia Avenue to the southeast, and Fenwick Street to the west. All of the lots within Square 4093 are zoned C-M-1. Directly to the north of the Site is Square 4037, which contains the historic Hecht Company Warehouse building on a portion of Lot 8, also owned by the Applicant development company. Redevelopment of the Hecht Warehouse was approved as a planned unit development and

Zoning Map amendment from the C-M-2 District to the C-3-C District in Z.C. Order No. 14-01, dated July 17, 2014, as modified by Z.C. Order No. 14-01A, dated June 29, 2015. Upon completion, the Hecht Warehouse will have approximately 338 residential units and over 210,000 square feet of new retail uses. Also across Okie Street from the Site and on Square 4037 is a seven-story, 1,067-car above-ground parking garage with additional ground floor retail and service uses, also owned by the Applicant development company. The current application proposes redevelopment the Site with additional and complimentary retail uses to further increase the recent revival of the Ivy City neighborhood.

The Site is located at the intersection of Okie Street, N.E. and Fenwick Street, N.E., with Okie Street to the north, private property to the east, private property and a 35-foot dead-end public alley to the south, and Fenwick Street to the west. The Site is rectangular in shape and has approximately 78,950 square feet of land area. The Site is presently improved with a one-story warehouse building with a partial second floor (shown as the "Parlor" on the attached architectural drawings) and a cellar, associated surface parking, and abandoned railroad tracks that run from Fenwick Street to the southeast corner of the Site. The Site has an existing density of 0.77 floor area ratio ("FAR") and the building has a height of 37 feet. The building was most recently used as a produce repacking warehouse.

The Applicant proposes to renovate the existing building and provide retail uses to compliment the recently developed Hecht Warehouse commercial district in the surrounding neighborhood. The existing building will be preserved structurally except for a 33'-2" wide open court that will be cut into the center of the building, resulting in the removal of approximately .06 FAR. The open court will be the main attraction for future retail tenants and patrons, particularly since the large warehouse floorplan does not lend itself to multiple retail tenants.

Other renovations include the lowering of the cellar to gain higher ceilings, and the redevelopment of the current parking and loading areas on the Site along Okie Street to create an entrance plaza. The overall renovated building will include approximately 65,786 square feet of gross floor area (0.83 FAR) and approximately 55,857 square feet of cellar floor area. The Applicant will retain the building's existing height of 37 feet at its highest point at the top of the parlor. Pedestrian entrances to the retail space will be provided from Okie and Fenwick Streets and from the rear alley. Trash will be stored and wheeled to the street from the loading area accessed from Fenwick Street.

Pursuant to 11 DCMR §§ 2201.1 and 2200.4, the Applicant is required to provide one loading berth at 30 feet deep and one loading berth at 55 feet deep; one loading platform at 100 square feet and one loading platform at 200 square feet; and one service/delivery space at 20 feet deep. The Applicant will meet the service/delivery space requirements and exceed the loading requirements (both loading berths will be 55 feet deep). The loading facilities will be accessed from the existing curb cut on Fenwick Street.

Pursuant to 11 DCMR §§ 2101.1 and 2100.4, 375 on-site parking spaces are required for the proposed retail use. However, the Applicant does not propose to provide any on-site parking spaces. Instead, parking will be provided across Okie Street in the Applicant's above-ground parking garage on Square 4037. With approximately 1,067 parking spaces in the garage, there is sufficient space to accommodate parking for the retail patrons and employees of the Site.

II. Burden of Proof for Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, the Applicant meets all three prongs of the area variance test.

A. The Property Is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.

The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). The unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2nd 1164, 1168 (D.C. 1990).

In this case, the Site's existing warehouse structure creates an exceptional situation and condition that directly impact the ability to provide the minimum number of required parking spaces. The building's cellar has tight column spacing that provides structural support for the first floor slab, which was built to hold forklifts and other delivery vehicles. This existing column spacing does not provide sufficient space to accommodate vehicle parking spaces or drive aisles. Thus, to provide parking in the cellar, the columns would have to be removed and

replaced with a new column grid system. This would require complete demolition of the existing building. In addition, the Site sits at approximately 92 feet in elevation, such that constructing an additional below-grade level would likely breach the water table.

B. Strict Application Would Result in a Practical Difficulty to the Owner

Subsection 2101.1 of the Zoning Regulations requires a total of 375 parking spaces for the proposed retail use at the Site. Required parking spaces must be located either within a parking garage or on an open area on the lot. 11 DCMR §§ 2101.1 and 2116.2. In this case, it is practically difficult for the Applicant to locate surface or below-grade parking spaces on the Site, and therefore requests a variance from 11 DCMR § 2101.1.

First, the only possible location for surface parking spaces is at the front of the Site along Okie Street, where the surface parking is presently located, since the rest of the Site is occupied by the existing building and the abandoned railroad tracks. Providing parking in this location would result in undesirable urban design, since pedestrians walking along Okie Street between the Site and the various other retail establishments in the area would face a parking lot rather than an inviting retail storefront. Not only would the surface parking be an eyesore, but it would result in multiple curb cuts and unnecessary and potentially dangerous pedestrian-vehicle conflicts. Furthermore, providing 375 parking spaces would require a minimum of 106,875 square feet of land area for the parking spaces alone (exclusive of drive aisles, *see* 11 DCMR § 2115.10), which is 27,925 square feet of land area larger than the Site itself. Currently, only 20 parking spaces can fit on the Site adjacent to the existing building. If the Applicant provided more than 20 spaces, it would have to demolish all or part of the existing building. If the Applicant continued to provide the 20 parking spaces, it would eliminate the opportunity to

provide a safe and inviting pedestrian entrance, thus deterring retail opportunities. As a result, it would be practically difficult to provide any surface parking spaces on the Site.

It is also practically difficult to provide parking in the existing cellar, since doing so would require removing and replacing the existing building columns in the cellar to provide adequate room for parking spaces and drive aisles. The effect would ripple throughout the building, necessitating a complete redesign of all column grid spacing on the upper floors as well. Replacing the columns throughout the building would essentially require gutting the entire building. Although not an historic landmark, a full gut would erode the building's historic fabric and rich history, and undermine the Applicant's intent to preserve the existing building as much as possible.

Moreover, due to the very large number of required parking spaces, the Applicant would have to construct multiple levels of parking below the existing building, since the building footprint is only 78,950 square feet, and the parking spaces alone would take up 106,875 square feet. Adding multiple levels would compromise the structural integrity of many of the existing building walls and jeopardize the building's historic fabric by forcing the Applicant to fully gut the entire building. In addition, the Site sits at approximately 92 feet in elevation, while the water table is at approximately 75 feet in elevation. Thus, while the Applicant proposes to lower the cellar slightly (to approximately 79.83 in elevation at its lowest point), in order to gain taller ceiling heights in the renovated building, an additional below-grade level devoted to parking would breach the water table, since the water table is less than five feet below the floor of the reconstructed cellar level.

Finally, constructing a parking ramp to provide access to below-grade parking would eliminate the building's prime retail frontage or the loading dock, depending on where the ramp is located.

Providing some or all of the parking spaces on the ground floor of the building is also practically difficult. Due to the very large number of required parking spaces, the Applicant would have to dedicate the entire ground floor level to parking spaces, plus at least one additional full level, to meet the parking requirement. The result would be a building devoted entirely to parking, rather than to the proposed retail uses, which completely defeats the purpose of renovating and adaptively reusing the existing building.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan

Relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan, as embodied in the Zoning Regulations and Zoning Map. The adaptive reuse of the existing warehouse structure with a variety of new community-serving retail establishments and enhanced public space will significantly contribute to the vibrancy of the block and the revival of Ivy City.

Providing no on-site parking will not create adverse impacts to on-street parking demand or to existing traffic conditions. As described above, the Applicant owns an above-grade parking garage directly across Okie Street from the Site, which contains 1,067 parking spaces. The garage adequately services other nearby and recently-developed retail establishments, and still has available parking spaces for new retail coming online. Therefore, should retail patrons and/or employees choose to drive to the Site, they can easily park in the adjacent garage. The Applicant will provide appropriate signage at the Site to direct patrons and employees to parking at the garage.

The Applicant has engaged Gorove/Slade Associates, Inc. as its transportation consultant, and will submit a comprehensive transportation assessment to the Board at least 14 days prior to the public hearing on this matter.

III. Burden of Proof for Special Exception

A. Standard of Review

Under D.C. Code § 6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the zone plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

B. Description of Roof Structure Relief Requested

The Applicant seeks special exception approval pursuant to 11 DCMR §§ 411.11 and 3104.1 for relief from the requirement that all penthouses and mechanical equipment be placed in a single enclosure. See 11 DCMR §§ 411.3 and 845.1. In this case, the Applicant proposes to provide three distinct roof structures. As shown on the roof plan included in the architectural drawings, the Applicant proposes to provide one roof structure on the east side of the open court and two roof structures on the west side of the open court. Pursuant to 11 DCMR 411.4, one

roof structure is permitted on each side of the court, such that relief is required to provide the two roof structures on the west side of the court. The northern-most roof structure on the west side of the court ("Roof Structure 1") is built to accommodate a new freight elevator and to allow access to the parlor and the roof terrace on the southwest portion of the building. Roof Structure 1 will rise to a maximum height of 13'-1" and will be significantly set back from all exterior walls. The southern-most roof structure on the west side of the court ("Roof Structure 2") will house mechanical equipment and a stair tower, which is required as a second means of egress to the roof. Roof Structure 2 will rise to a maximum height of 15'-6" and will be set back from all exterior walls at a distance equal to its height above the roof on which it sits.

C. Compliance with Special Exception Standard for Roof Structures

Section 411.11 of the Zoning Regulations empowers the Board to grant a special exception under 11 DCMR § 3104 from the location, design, number, and other aspects of roof structures regulated under 11 DCMR §§ 411.3 through 411.6, if the Applicant can demonstrate that full compliance would be impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, provided the intent and purpose of the Zoning Regulations are not materially impaired, and the light and air of adjacent buildings are not adversely affected.

In this case, full compliance with the requirement that both roof structures on the west side of the open court be placed in a single enclosure would be impracticable. Although the Applicant could theoretically provide a single enclosing wall over Roof Structures 1 and 2, doing so would thwart the Applicant's intent to preserve the spirit of the historic warehouse building and to maintain its existing low-rise appearance by not adding an entire additional story.

Moreover, providing a single, large roof structure would be unduly restrictive and unreasonable, given that it would add unnecessary massing to the roof and would undermine the purpose of the Regulations, which is to exercise a degree of architectural control over roof structures. See 11 DCMR § 411. Moreover, the proposed roof structures will be clad in quality materials that match the façade materials of the overall building and integrate well into the overall building design. In addition, the roof structures meet all other height and setback requirements under 11 DCMR 411. Therefore, although there will be two separate roof structure on the west side of the building, the two structures will be in harmony with the purpose and intent of the Zoning Regulations and therefore meet the test for special exception relief under 11 DCMR §§ 411.11 and 770.6.