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May 28, 2003

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

Re: BZA Application No. 17012
Parking and Loading Requirements for Historic Landmarks and Contributing Buildings in Historic Districts

Dear Members of the Board:

At its public hearing on Application No. 17012 held May 20, 2003, the Board requested that the Applicant provide an analysis of the provisions of Chapters 21 and 22 of the Zoning Regulations as they pertain to any requirement to provide off-street parking and loading at the Subject Property, which is improved with buildings that have been certified by the State Historic Preservation Officer as contributing to the character of the Shaw Historic District (please see attached). For the reasons set forth below, the Applicant submits that as a result of: (1) the plain language of the regulations; (2) the long-standing interpretation of the Zoning Administrator; and (3) the previous holdings of the Board, the Applicant's rehabilitation plans for the Subject Property do not require the Applicant to provide any additional parking or loading on the Subject Property.[1]

[1] At the Board's suggestion, at the public hearing, the Applicant submitted, as an alternative, sufficient evidence and testimony to justify the grant of variance relief from both the parking and loading requirements for the proposed redevelopment of the Subject Property.

BZA
Case No. 17012
Exhibit No. 46

Board of Zoning Adjustment
District of Columbia
CASE NO. 17012
EXHIBIT NO. 46

1. Plain Language of the Regulations:

In the interpretation of statutes, rules and regulations, the general rule is that a legislature or rule-making body is presumed to have inserted every part thereof for a purpose. As such, statutes, rules and regulations should be construed so that effect is given to all provisions, so that no part will be inoperative, superfluous, void or insignificant. Effect should be given to every section, paragraph, sentence or clause, phrase and word of a statute, rule or regulation, as appropriate. Similarly, between general provisions and more specific provisions within the same statute, rule or regulation, the more particular provision must control. (See generally 73 Am. Jur. 2d §§165, 170, and Sutherland, Statutory Construction, 6th ed. §§30.6, 46.05, 46.06).

Section 2100 of the Zoning Regulations, entitled "Authority to Require Parking Facilities," establishes generally the parking requirements for buildings and structures in the District. Section 2200 of the Regulations establishes virtually identical requirements for loading.

Within §2100, §2100.1 provides that "[a]ll buildings or structures erected on or after May 12, 1958, shall be provided with parking spaces to the extent specified in §2101 ..." Further, §2100.4 directs that "when the use of a building is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change, or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for the additional requirement in the amount necessary to conform to §2101." Nonetheless, §2100.4 specifically excludes designated historic buildings from this requirement to provide additional parking spaces in order to accommodate change(s) in use.

This exclusion is also set forth explicitly in §2100.5. which reads, "No additional parking spaces shall be required for a historic landmark or a building or structure located in a historic district which is certified by the State Historic Preservation Officer as contributing to the character of that historic district." Immediately thereafter, §2100.6 of the Regulations provides that, "When the intensity of use of a building or structure existing before May, 1958 is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement ... parking spaces shall be provided for the addition, subject to §§2100.7 through 2100.9." Subsection 2100.7 states that "Parking spaces shall not be required for the addition unless the addition increases the intensity of use of the building or structure by more than twenty-five percent (25%) of the aggregate." Of these

subsections, the most particular provision relating to historic buildings and structures is §2100.5.

With respect to the Subject Property, which is improved with buildings that have been determined by the State Historic Preservation Officer to contribute to the character of the Shaw Historic District, the instant application contemplates rehabilitation of the existing buildings and the construction of a rear addition, which will both change and increase the intensity of uses that took place on the Subject Property immediately prior to the improvements being left vacant. Projects such as the Applicant's have consistently been treated by both the Zoning Administrator and the Historic Preservation Review Board as additions to the existing historic buildings.

If the Applicant's project involved renovation and addition to buildings constructed in 1958 or more recently, §§2100.1 and 2100.4 would demand the provision of parking spaces in keeping with the new use for the Subject Property. By contrast, if the project involved renovation and addition to buildings constructed prior to May 12, 1958, §§2100.6 through 2100.10 would require parking be provided only for any addition that increased the intensity of use by more than 25 percent.

Subsection 2100.5 establishes a third category of buildings and structures, as distinguished from those buildings or structures built either (1) after May 12, 1958 or, (2) before that date, namely designated individual landmarks and contributing buildings to historic districts, whether they were built prior to, or after, 1958. As such, §2100.5 (and §2200.5 for loading) completely exempt said historic buildings or structures from any additional parking (and loading) requirements than are already provided. Thus, as a matter of statutory construction, these most specific provisions relating historic buildings or structures control and no additional parking or loading are required in the instant case.

2. Long-Standing Interpretation of the Zoning Administrator:

The Zoning Administrator has consistently applied the plain language of the above-referenced parking and loading provisions. Additional new parking spaces or loading berths have not been required for a change in the use of a qualifying historic property nor for an increase in the intensity of use, including an addition to the floor area of a building. The application of those provisions has been uniformly applied to *all* qualifying properties and has not been based upon the degree of increase in intensity. There is nothing in the cited sections, or in any other provision of the

Regulations, which limits the size of the increase or authorizes the Zoning Administrator to determine that parking would be required for some additions and not others. Compare these sections to §§2100.7 and 2200.7, which differentiate increases in intensity above and below twenty-five percent for non-historic buildings.

The Applicant submits that, in the present case, where the Zoning Administrator has consistently applied the plain language of §§2100.5 and 2200.5 as waiver from additional parking and loading requirements for designated historic buildings, the Board should proceed cautiously in reversing its own cases where no additional parking and loading have been required and years of consistent interpretation of the Regulations by the Zoning Administrator. A different interpretation by the Board at this time could have a chilling effect upon historic rehabilitation projects still in development and those in the future.

(3) Previous Determinations of the Board:

The importance of the Board's determination in the present case is further underscored by the fact that the Board has reviewed and approved numerous applications involving redevelopment projects that have been presented for various aspects of zoning relief and which have included waiver from the parking and loading requirements as a result of their designated historic status. Such projects have ranged from small to large additions to historic buildings and have included the Corcoran Gallery of Art (BZA No. 14703), the Atlantic Building at 930 F Street, NW (BZA Nos. 14967 and 16892), 910-916 F Street, NW (BZA Nos. 16581 and 16757), the Religious Action Center Headquarters at 2027 Massachusetts Avenue (BZA No. 16600), 501-507 7th Street, NW (BZA No. 16681), the Arena Stage at 1101 6th Street, SW (BZA No. 16933), and the German Marshall Fund Headquarters at 1744 R Street, NW (BZA No. 16953). Significantly, as the District of Columbia Court of Appeals noted in *Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356, "while [the Board] is not bound for all time by its prior positions, [the Board] should have considered ... contention of property owner that zoning administrator's approval of construction of sun deck was given pursuant to a long-standing interpretation of zoning regulations which had been approved in the past by the [B]oard."

Given this context, the Applicant submits that if the Board is inclined and authorized to proceed with a new interpretation of the regulations at issue, in fairness to the Applicant, the Board should only apply such new interpretation prospectively and not retroactively. Further, the Zoning Regulations should be clarified on these issues by text amendment after public hearing before the Zoning Commission.

For all the above reasons, the Applicant submits that §§2100.5 and 2200.5 exempt the instant application from additional parking and loading requirements.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____
Norman M. Glasgow, Jr.

_____
Dennis R. Hughes

Attachment
cc: ANC 2C
Office of Planning
Paul Millstein

APPLICATION TO CERTIFY A HISTORIC BUILDING FOR D.C. ZONING REGULATIONS OR CONSTRUCTION CODES

I hereby request certification that the following property is a historic landmark or a building or structure contributing to the character of a historic district in the D.C. Inventory of Historic Sites, for the purpose of D.C. Zoning Regulations or the D.C. Construction Code. A photograph of the front of the building is attached.

Address: 1301-1309 9th Street, N.W.

Square: 399 Lot: 62, 63, 800, 801, 803, 804

PURPOSE OF REQUEST:

X Waiver of Additional Off-Street Parking Spaces (Section 2100.5)

X Waiver of Additional Off-Street Loading Spaces (Section 2200.5)

_____ Increase in Number of Sleeping Rooms in a Bed-and-Breakfast Facility (Section 203.8)

_____ Non-Mandatory Compliance with Code Provisions (BOCA Section 3406.1)

_____ Alternative Compliance Provisions for Existing Buildings (Chapter 34, DC Construction Code Supplement of 1999)

Jemal's Benjo LLC
Applicant

Telephone

c/o Holland & Knight LLP, 2099 Pennsylvania Ave., NW, #100, Washington, DC 20006
Address

Signature

May 14, 2003
Date

HISTORIC PRESERVATION DIVISION USE ONLY

I hereby certify that this property is either a historic landmark or a building or structure contributing to the character of a historic district listed in the D.C. Inventory of Historic Sites.

State Historic Preservation Officer

5-14-03
Date

WAS1 #1182734 v1