ShawPittman LLP

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October 26, 2004

By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W., Room 210
Washington, D.C. 20001

Re: BZA Application No. 17200 of Potomac Foods (Square 1971, Lot 822) ("Property")

Dear Chairman Griffis and Members of the Board:

During the public hearing in the above-referenced case, the Board asked the Applicant to supplement the record with the following: (1) a letter from the owner of the Property authorizing the relief requested in this application; (2) a landscape plan; (3) photographs of the two trash receptacles recently placed on the Property; and (4) an argument addressing whether the Board has jurisdiction to regulate uses on a different lot pursuant to § 214 of the Zoning Regulations. The requested items are addressed below.

Authorization Letter:

According to the District of Columbia tax records, the owner of the Property is BB&H Joint Venture. Attached as Exhibit A is a letter from Albert R. Hinton, President of BB&H Joint Venture, authorizing Shaw Pittman to represent BB&H in this application.

Landscape Plan:

During the public hearing, the Board requested more information regarding the applicant's proposal to provide additional landscaping at the western boundary of the Property, which abuts several residences. Since the public hearing, the Applicant has landscaped the area with additional grass and shrubbery. Photographs of the landscaping are attached as Exhibit B. The Applicant proposes to maintain this landscaping in a healthy, growing condition. While additional ground cover could be added, the exterminators have warned that it could grow to become a haven for rats and that sod is preferable.

BZA
Case No. 17200
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO. 17200
EXHIBIT NO. 31

Trash Receptacles:

Prior to the hearing, the Applicant proposed to place two trash receptacles on the Property to discourage customers parking in the lot and pedestrians traversing the alley from littering on the Property. As shown in the photograph attached as Exhibit C, the Applicant has placed two new trash receptacles on the raised concrete area on the eastern and northern boundaries of the Property.

Regulation of the Burger King Restaurant Pursuant to § 214.7

During the public hearing, Commissioner Kessler of ANC 3F argued that the Board has authority to regulate the Burger King restaurant located at 4422 Connecticut Avenue, N.W. pursuant to § 214.7 of the Zoning Regulations. This argument has no merit for a number of reasons. First, § 214 is not intended to regulate matter-of-right uses. The purpose of that section is to provide for special exception approval of accessory parking lots and facilities that are truly accessory to the parking lot use. The intent of § 214 is evident in its title: "Accessory Parking Spaces." As such, that section is intended to regulate only the accessory parking spaces, not the principal use. Section 214.7 provides: "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 term "facilities" in § 214.7 applies only to "facilities" that are "in relation to the parking lot." It does not apply to "facilities" related to the principal use. Examples of facilities related to the operation of the accessory parking lot would include a shelter for a parking attendant or a gate that regulates vehicles entering and exiting the lot. Section 214.7 does not apply to the Burger King restaurant, which operates as a matter-of-right use on an entirely different lot and in a different zone district. The term "facilities" in Section 214.7 simply is not intended to apply to the operating conditions of a separate matter-of-right use on a separate lot.

Further, a regulation permitting special exception approval of accessory parking lots should not be interpreted to expand the Board's jurisdiction to matter-of-right uses. Such action will effectively turn matter-of-right uses into uses subject to special exception approval. Subjecting property owners who are operating as a matter-of-right to burdensome conditions will discourage such owners from providing much-needed accessory parking spaces.

The issue in this case is whether the accessory parking lot meets the conditions set forth in § 214. It is not whether the matter of right use on a different lot in a different zone district

meets those conditions. Indeed, the denial of this application will have no effect on the Applicant's continued right to operate its Burger King restaurant. The Applicant has satisfied the requirements of § 214 and has agreed to work with neighbors to alleviate any existing objectionable conditions stemming from the accessory parking lot itself.

Even so, as an accommodation to the neighbors, Potomac Foods has made every effort to work with the community to decrease the noise levels caused by the Burger King drive-through. The Applicant has agreed to reduce the volume of the drive-through speakers and recently replaced the speaker with a smaller model that will produce less sound. However, the Applicant's willingness to address the concerns of its neighbors should not expand the Board's jurisdiction under § 214.

Respectfully submitted,

Ashleigh D. Horne

Ashleigh D. Horne

cc: Carl Kessler, ANC 3F
John Moore, Office of Planning

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October 7, 2004

Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: BZA Application for a Special Exception for Continued Use of the Parking Lot Located at 4422 Connecticut Avenue, N.W.

Honorable Members of the Board:

I am the President of BB&H Joint Venture, the owner of the property located at 4422 Connecticut Avenue, N.W. (Lot 822, Square 1971) ("Property"). Potomac Foods, the applicant in Board of Zoning Adjustment Case Number 17200, leases the Property and operates the surface parking lot located on the Property. This letter authorizes the law firm of Shaw Pittman to represent BB&H Joint Venture in all proceedings before the Board of Zoning Adjustment concerning the Property. I am aware of, and fully support, the relief requested in this application and during the public hearing held on October 6, 2004.

Sincerely,

Name: 

Title: ALBERT R HINTON
President

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