

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

**APPLICATION OF
JEMAL'S PAPPAS TOMATO'S, L.L.C.
1401 OKIE STREET, NE**

**BZA CASE NO. 19200
HEARING DATE: MAR. 1, 2015
ANC 5D01**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Jemal's Pappas Tomato's, L.L.C. (the "Applicant"), an affiliate of Douglas Development Company ("Douglas Development") and the owner of property located at 1401 Okie Street, NE (Square 4093, Lot 832) (the "Site"), in support of its application to the Board of Zoning Adjustment ("BZA" or the "Board") for a variance from the off-street parking requirements of 11 DCMR § 2101.1 to allow the adaptive reuse of an existing warehouse building with retail and light manufacturing uses in the C-M-1 District at the Site

This application was submitted prior to the effective date of the new penthouse regulations (Z.C. Case No. 14-13), which became final and effective upon publication in the *DC Register* on January 8, 2016. In the original filing, the Applicant requested special exception relief from the requirements of the old penthouse regulations (11 DCMR §§ 411.3 and 845.1), which required all penthouses and mechanical equipment to be placed in a single enclosure. Relief was necessary to permit two penthouses on the west roof of the building. Pursuant to section 411.8 of the new penthouse regulations, "[w]hen roof levels vary by one floor or more or when separate elevator penthouses are required, there may be one enclosure for each elevator penthouse at each roof level." Under this provision, two penthouses are permitted on the west

roof of the building. The west roof has two heights: one at 20' and one at 30'-6". The Applicant proposes to provide one penthouse on top of the 20' roof, which will enclose a stair tower and mechanical equipment, and one penthouse on top of the 30'-6" roof, which will enclose an elevator. Thus, because the roof levels "vary by one floor or more," the separate penthouses are permitted. The Applicant therefore no longer needs special exception approval to provide two penthouses on the west roof of the building. The Zoning Administrator confirmed this interpretation of 11 DCMR § 411.8 on January 29, 2016.

Moreover, on December 8, 2015, the Applicant submitted a letter to the Board amending its original application to add a special exception under 11 DCMR § 770.6 of the old penthouse regulations (which were still in effect at that time), and which required penthouses to be setback 1:1 from all exterior walls.¹ The relief was necessary since the Applicant was proposing to provide a second roof structure on the east side of the building that would not be setback 1:1 from the rear exterior wall. However, following submission of its December 8, 2015 letter, the Applicant's architect redesigned the building's interior layout such that the second penthouse on the east roof of the building could be setback more than 1:1. The additional special exception requested is therefore no longer necessary.

On January 29, 2016, the Zoning Administrator also confirmed that two roof structures are permitted on the east side of the roof pursuant to section 411.6 of the new penthouse regulations, which provides that "[a]ll penthouses shall be placed in one (1) enclosure... except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure." The second penthouse on the east side of the building contains a stairwell only, and is thus permitted as a matter-of-right.

¹ The new penthouse regulations also require a 1:1 setback from exterior walls. *See* 11 DCMR § 411.18.

Based on the foregoing, the only necessary zoning relief for the proposed project is for a variance from the on-site parking requirements of 11 DCMR § 2101.1, to not provide any parking spaces where 223 spaces are required.

II.

JURISDICTION OF THE BOARD

The BZA has jurisdiction to grant the variance relief pursuant to 11 DCMR § 3103.2.

III.

BACKGROUND

A. Description of the Site and Surrounding Area

Square 4093 is located in the northeast quadrant of the District and is bounded by Okie Street to the northwest, 16th Street to the northeast, West Virginia Avenue to the southeast, and Fenwick Street to the southwest. As shown on the Zoning Map attached hereto as Exhibit A, all of the lots within Square 4093 are zoned C-M-1.

The Site is located at the southeast corner of the intersection of Okie Street, NE and Fenwick Street, NE, with Okie Street to the north, private property to the east and 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 (the "Parlor"), a cellar, associated surface parking, and abandoned railroad tracks at the rear of the Site 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 maximum height of 35 feet. The building was most recently used for produce repacking, with a Certificate of Occupancy for wholesale use (*see* Exhibit B).

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 Douglas Development.

Redevelopment of the Hecht Warehouse was approved as a Planned Unit Development pursuant to 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, above-ground parking garage with space for over 1,000 vehicles and approximately 40,000 square feet of retail and service uses. The garage is also owned by Douglas Development. Farther down Okie Street to the east of the garage is "Hecht East," which Douglas Development is developing with approximately 130,000 square feet of ground floor retail and service uses. The current application proposes redevelopment of the Site with additional and complimentary retail and light manufacturing uses to further increase the recent revival of the Ivy City neighborhood.

B. Existing Zoning

The Site is located in the C-M-1 District. Retail uses are permitted as a matter-of-right in the C-M-1 District. *See* 11 DCMR § 801.2. Light manufacturing uses are also permitted as a matter-of-right in the C-M-1 District, subject to the standards of external effects set forth in 11 DCMR § 804. *See* 11 DCMR § 801.7(d). C-M-1 zoning permits a maximum building height of 40 feet (three stories) and a maximum density of 3.0 FAR. 11 DCMR §§ 840.1 and 841.1.

C. Project Description

As shown on the Architectural Plans and Elevations (the "Plans") attached hereto as Exhibit C, the Applicant proposes to renovate the existing building and provide retail and light manufacturing uses to compliment the recently developed Hecht Warehouse commercial district in the surrounding neighborhood. Approximately 88% of the building's floor area will be devoted to retail use, and approximately 12% of the building's floor area will be devoted to light

manufacturing uses, to be used by a future tenant coffee company to roast coffee beans on Site for sale both on-site and off-site. The light manufacturing use will be located entirely within the cellar of the building and will supplement the coffee company's retail store and bakery on the ground level.

The existing building will be preserved structurally except for a 33'-6" wide open court that will be cut into the center of the building, resulting in the removal of density and the creation of an active pedestrian walkway. The open court will be the main attraction for future retail tenants and patrons and will strategically cut up the large warehouse floor plate.

Other renovations include lowering the cellar to gain taller ceiling heights and redeveloping the current parking and loading areas on the Site along Okie Street to create a welcoming entrance plaza. The overall renovated building will include approximately 54,521 square feet of gross floor area (0.69 FAR) and approximately 55,857 square feet of cellar floor area, for a total of 110,378 square feet of new retail and light manufacturing uses. The Applicant will retain the building's existing height of 35 feet at its highest point at the top of the Parlor.

Loading will be located in a central area on the ground floor that is connected to all of the retail spaces, either directly on the ground floor or through a service corridor in the cellar. Access to the loading facilities will be from a curb cut on Fenwick Street to limit pedestrian conflicts on Okie Street, which will be the primary route for foot traffic from the parking garage and adjacent retail locations to the Site. Pursuant to 11 DCMR §§ 2201.1 and 2200.4, the Applicant will provide two loading berths at 30 feet deep and one loading berth at 55 feet deep; two loading platforms at 100 square feet and one loading platform at 200 square feet; and one service/delivery space at 20 feet deep. These loading facilities meet the minimum requirements for the proposed retail and manufacturing uses. Trash facilities will be stored in the loading area.

Pursuant to 11 DCMR §§ 2101.1 and 2100.4, 223 on-site parking spaces are required for the proposed retail and manufacturing uses. This number takes into account a credit of 104 parking spaces based on Site's prior wholesale use and 15 zoning-compliant parking spaces that are presently located on the Site and which will be removed. 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, which was built in anticipation of new retail uses at the Site. With over 1,000 parking spaces in the garage, there is sufficient space to easily accommodate all parking needs generated by the Site. Out of the twelve existing retail leases in the Hecht Warehouse, only four retail tenants have dedicated spaces in the garage (a total of 75 parking spaces). The residential use at the Hecht Warehouse has an additional 250 dedicated parking spaces in the garage. Thus, out of over 1000 parking spaces, only 361 are presently dedicated to existing retail and residential uses, leaving more than enough space for the parking demand generated by the Site.

IV.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the parking requirements of 11 DCMR § 2101.1. 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 unusual because of its 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, and as will be further explained at the public hearing, the Applicant meets the three-prong 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. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 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 on-site 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 heavy delivery vehicles. This existing column spacing does not provide enough space in any direction to accommodate vehicle parking spaces or drive aisles. Thus, to provide parking in the cellar, the Applicant would have to remove the existing columns and replace them with a new column grid system, which would essentially 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 of the Zoning Regulations Would Result in a Practical Difficulty to the Owner

Strict application of 11 DCMR § 2101.1 will result in a practical difficulty to the Applicant. Subsection 2101.1 of the Zoning Regulations requires a total of 223 parking spaces for the proposed retail and manufacturing uses 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 garage parking spaces on the Site, and the Applicant therefore requests a variance from 11 DCMR § 2101.1.

1. Surface Parking

The only possible location for surface parking spaces is at the front of the Site along Okie Street, where 15 grandfathered surface parking spaces are presently located,² since the rest of the Site is occupied by the existing building or the railroad tracks. The provision of additional parking spaces in this area is not permitted pursuant to 11 DCMR § 2116.4.

Providing 223 surface parking spaces would require a minimum of approximately 73,590 square feet of land area, which is approximately 93% of the Site's total land area. Currently, only 20 total parking spaces can fit on the Site adjacent to the existing building, five of which are tandem and not directly accessible. If the Applicant provided more than 20 spaces, it would have to demolish part of the existing building. If the Applicant continued to provide the existing 20 parking spaces, it would eliminate the opportunity to provide a safe and inviting pedestrian entrance to the building, thus significantly deterring retail opportunities. Moreover, DDOT has indicated that it would not approve curb cuts along Okie Street. As a result, it would be practically difficult to provide any surface parking spaces on the Site.

² A total of 20 parking spaces are located on the Site, but five are tandem spaces.

2. Garage Parking

It is practically difficult to provide parking in the building's existing cellar, since doing so would require removing and replacing the existing column grid in the cellar to provide adequate room for parking spaces and drive aisles. The effect would ripple through the building, necessitating a complete redesign of the column grid spacing on the upper floors as well. Replacing the columns throughout the building would essentially require gutting or demolishing the entire building.

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 52,261 square feet, and the parking spaces alone would take up approximately 73,590 square feet. Adding multiple below-grade levels and a ramp to access those levels would compromise the structural integrity of many of the existing building walls, and would jeopardize the building's existing fabric by forcing the Applicant to fully gut the entire building.

In addition, the Site sits at approximately 92' in elevation, while the water table is at approximately 75' in elevation. Thus, although the Applicant proposes to lower the cellar slightly in order to gain taller ceiling heights in the renovated building (from elevation 96.33' to elevation 79.83' at its lowest point), 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 area, 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 level, to meet the parking requirement. The result would be a building devoted entirely to parking, rather than to the proposed retail and light manufacturing uses, which completely defeats the purpose of renovating and adaptively reusing the existing building.

C. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a 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, light manufacturing uses, and enhanced public gathering spaces will significantly contribute to the vibrancy of the surrounding blocks 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 in detail in the Comprehensive Transportation Review (“CTR”) Report prepared by Gorove/Slade Associates, submitted to DDOT, and attached hereto as Exhibit D, the abundant supply of on- and off-street parking options in the surrounding area will adequately serve the project; the Site’s access to transit, bicycle, and pedestrian facilities will result in a safe and effective environment for non-automobile transportation to the Site; and a transportation demand management (“TDM”) plan will be implemented to further reduce any negative impact that results from the parking variance. The CTR also reviews the existing transit, bicycle, pedestrian, and carshare facilities surrounding the Site; assesses anticipated trip generation caused by the proposed new uses; reviews proposed

access points and circulation for the Site; and sets forth parking occupancies on the surrounding streets and in the adjacent garage. The CTR concludes that the parking variance will not result in any negative impacts to the parking or traffic conditions in the surrounding area.

As described above, the Applicant owns the above-grade parking garage directly across Okie Street from the Site, which contains over 1,000 parking spaces. The garage adequately services other nearby and recently-developed retail establishments, and still has available parking spaces for the new uses coming online at the Site. 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 to direct patrons and employees to parking at the garage.

Moreover, the Site is well served by public transportation. The D3, D4, and E2 Metrobus lines have a dedicated bus stop located at the Site (corner of Okie and Fenwick Streets, NE), and the D8 Metrobus line has a bus stop approximately 0.3 miles from the Site. The NoMA-Gallaudet University Metrorail station is located approximately 1.5 miles from the Site. A new bikeshare station was recently installed by Douglas Development outside of the Hechts Warehouse across the street from the Site with 22 docks.

Moreover, according to walkscore.com, which measures the walkability, transit, and bicycle access of properties, the Site is rated “Very Walkable,” since “most errands can be accomplished on foot.” Retail patrons and employees will be able to park at the parking garage once, and then walk to all of the various new retail and service establishments in the surrounding Ivy City area. Existing establishments developed by Douglas Development within a single block of the Site include a Mom’s Organic Market, Nike retail store, Petco, various fitness facilities including a Planet Fitness, yoga studio, and crossfit gym, and a bicycle shop. An additional 97,120 square feet of additional retail will be coming online upon redevelopment of the Site, plus

thousands of square feet more of additional retail space in the surrounding blocks. Thus, although patrons and employees may choose to drive to the Site, once they arrive in the area they will not need a car to move around.

**V.
COMMUNITY SUPPORT**

The Applicant has worked with the community and is pleased to have support for the project. On January 12, 2016, at its regularly scheduled, duly noticed Advisory Neighborhood Commission (“ANC”) 5D meeting, with a quorum of commissioners present, ANC 5D voted unanimously and enthusiastically to support the application. A copy of the ANC’s resolution in support is included in the record at Exhibit 26.

**VI.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION**

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| <u>Exhibit A:</u> | A portion of the Zoning Map showing the Site |
| <u>Exhibit B:</u> | Certificate of Occupancy for the existing building |
| <u>Exhibit C:</u> | Updated Architectural Plans and Elevations for the Project |
| <u>Exhibit D:</u> | Comprehensive Transportation Review Report |
| <u>Exhibit E:</u> | Outlines of Testimony |
| <u>Exhibit F:</u> | Resumes of Expert Witnesses |

**VII.
WITNESSES**

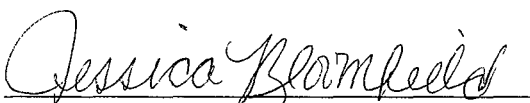
- A. Paul Millstein and Andrea Gourdine, Representatives of the Applicant
- B. Kevin Sperry, Antunovich Architects, architects for the project
- C. Erwin Andres, Gorove/Slade, traffic consultant for the project

VII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance and relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

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