

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

**APPLICATION OF
JEMAL'S PAPPAS TOMATO'S, L.L.C.
HEARING DATE: DEC. 19, 2018**

**BZA APPLICATION NO. 19200B
SQUARE 4093, LOT 22
ANC 5D**

PREHEARING STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This prehearing statement is submitted by Jemal's Pappas Tomato's, L.L.C. (the "Applicant"), in support of its application for a modification of significance to the architectural drawings approved in BZA Order Nos. 19200 and 19200A for property located in the PDR-1 District at 1401 Okie Street, NE (Square 4093, Lot 22) (the "Site").¹ The application also includes a request for special exception relief pursuant to 11-X DCMR, Chapter 9 to permit (i) "Entertainment, Assembly, and Performing Arts" uses, as defined by 11-B DCMR § 200.2(n) in the approved building at the Site (11-U DCMR § 802.1(d)); (ii) nightclub, bar, cocktail lounge, and/or restaurant uses in new outdoor roof decks (11-C DCMR § 1500.3); (iii) a reduction in the number of required parking spaces (11-C DCMR § 703); and (iv) to provide a minimum rear yard depth of 4 feet, 9 inches whereas 12 feet is required (11-J DCMR § 205.2). The application also requests a variance pursuant to 11-X DCMR § 1000.1 from the requirements of 11-U DCMR § 802.1(d)(3), which do not permit Entertainment, Assembly, and Performance Arts uses within 1,000 feet of a property containing an existing live performance venue.

¹ At the time that BZA Case Nos. 19200 and 19200A were reviewed and approved the Site was known as Lot 832. The Site has since been subdivided into Record Lot 22.

II.
JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the requested modification of significance pursuant to 11-Y DCMR § 704. In addition, the Board has jurisdiction to grant the requested special exception relief pursuant to 11-X DCMR § 901.2 and the variance pursuant to 11-X DCMR § 1000.1.

III.
WITNESSES

Outlines of testimony for the Applicant and its witnesses were provided in the BZA application and are included in the record at Exhibit 8. Copies of the resumes for the Applicant's expert witnesses are included in the record at Exhibit 9.

IV.
BACKGROUND

A. Description of the Site and Surrounding Area

As described in the Applicant's Statement of Compliance included in the original application filing (Exhibit 3), the Site is located in the PDR-1 Zone District. The Site is located at the southeast corner of the intersection of Okie and Fenwick Streets, NE and is bounded by 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 an existing building that is being renovated pursuant to the architectural drawings approved by BZA Order Nos. 19200 and 19200A. Prior to its renovation, the building was operated with a wholesale use.

The Site is within the Ivy City neighborhood of the District. It is generally surrounded by production, distribution, and repair zones (PDR-1 through PDR-4), and is one block south of New York Avenue, NE. Directly to the north is the Hecht Warehouse apartment building and an above-grade parking garage, both of which have ground floor retail and restaurant uses and are owned by

the same development company as the Applicant entity (Douglas Development). Directly to the east and south of the Site are vehicle storage yards owned by the District government. To the west is the Profish Limited seafood wholesaler. The CSX and Metrorail tracks are located across New York Avenue to the north; the National Arboretum and Mount Olivet Cemetery are located to the southeast. Small-scale residential development is located to the southwest.

B. Prior Development Approvals

Pursuant to BZA Order No. 19200, effective on March 3, 2016, the Board granted a variance from the off-street parking requirements of Section 2101.1 of the 1958 Zoning Regulations (“ZR58”) to allow the adaptive reuse of the then-existing two-story warehouse building on the Site to retail and light manufacturing uses. Under Section 2101.1 of ZR58, a total of 223 on-site parking spaces were required for the proposed retail and manufacturing uses. The Board granted a variance from Section 2101.1 to allow the Applicant to provide zero parking spaces on the Site, based in part because Douglas Development had already constructed a seven-story above-ground parking garage across Okie Street immediately to the north of the Site (less than 150 feet away). The parking garage contains 1,070 parking spaces and was built to accommodate future development at the Site and other properties.

Pursuant to BZA Order No. 19200A, effective on November 1, 2016, the Board approved a Modification of Consequence to the approved architectural drawings to add a new third-story addition to a portion of the west side of the building and to incorporate office use into the building. Those changes resulted in relocated core elements, shifted penthouses at the roof levels, reconfigured partitions within the retail space to accommodate office use, and reconfigured loading facilities. The approved, modified building has approximately 73,244 square feet of GFA (0.93

FAR) and approximately 51,582 square feet of cellar floor area, and a maximum building height of 40 feet.

The modification application did not require additional zoning relief. Indeed, the modified drawings resulted in a significant reduction in required on-site parking spaces from the 223 parking space requirement generated under the original application to 43 parking spaces required under the modified plans. The reduction was a result of the adoption of the 2016 Zoning Regulations, which required fewer parking spaces than did ZR58, and also resulted from the revised building uses.

C. Proposed Modifications

As shown on the architectural drawings attached hereto as Exhibit A, and as described in detail in the Applicant's Statement of Compliance (Exhibit 3), the Applicant proposes to incorporate additional use categories into the building and further reconfigure and construct additional GFA. The changes are a result of the Applicant signing leases with new building tenants who have specific programmatic needs.

1. New Uses

The building was approved to contain PDR, retail, and office uses. The Applicant proposes to add (i) "Entertainment, Assembly, and Performing Arts" uses, as defined by 11-B DCMR § 200.2(n); and (ii) "Eating and Drinking Establishment" uses, as defined by 11-B DCMR § 200.2(j) to the building. The approved PDR, retail, and office uses will continue to be provided in the building.

As shown on the architectural drawings, approximately 21,718 square feet of the building are proposed for Entertainment use. However, because Entertainment use is permitted only as a special exception in the PDR-1 District, the Applicant requests flexibility to increase or decrease the total square footage of Entertainment use in the building, which may change over time, in order to avoid returning to the BZA with each variation in tenant spaces. The proposed Entertainment use meets the

special exception standards, except for its proximity to another Entertainment use, for which the Applicant requested a variance.

The Eating and Drinking use will be occupied by several new restaurant/bar establishments and will be in various locations throughout the building. The Eating and Drinking use is permitted as a matter of right in the PDR-1 District, but is permitted only as a special exception (in every zone) if located in penthouse habitable space. *See* 11-C DCMR §1500.3(c). The project includes several new roof decks that will be occupied by various Eating and Drinking establishments. Although roof decks are not included in the definition of “penthouse habitable space,” the Applicant requests special exception relief pursuant to 11-C DCMR § 1500.3(c) out of an abundance of caution.

2. Revised Building Design

As shown on the architectural drawings, the Applicant proposes to (i) construct a partial second story on the northeast corner of the building (previously one story in this location); (ii) increase the amount of floor area previously proposed on the second and third stories on the southwest corner of the building; and (iii) extend the building’s ground floor into the rear yard for the first 36.5 feet of vertical height of the building to increase the occupiable space in the southeast corner of the building.

The modifications to the building design result in an addition of approximately 19,936 square feet of GFA, such that the total GFA in the building increases from 73,244 square feet and 0.93 FAR (approved) to 93,180 square feet and 1.18 FAR (proposed). The building is still well within the maximum matter of right density of 2.0 FAR for restricted uses. As noted above, the Applicant also proposes to add outdoor roof deck terraces in several locations on the building, some of which will be occupied with nightclub, bar, cocktail lounge, and/or restaurant uses.

The architectural drawings attached as Exhibit A include two minor changes from the drawings filed with the application on October 4, 2018 (Exhibit 4). First, the drawings now show the location and number of long- and short-term bicycle parking spaces that were previously not

identified. The project will provide at least the minimum number of long- and short-term bicycle parking spaces required by the Zoning Regulations. Second, the drawings show that the southeast corner of the building, which was previously setback approximately 5 feet, 4 inches from the east property line, now abuts the east property line in that corner location. This modification was a result of changes to the demising walls for the adjoining tenant spaces, which resulted in different egress stair access requirements. Neither of the modifications from the architectural drawings submitted on October 4, 2018 change any of the areas of zoning relief requested in this application.

3. Parking, Loading, and Public Space

As a result of the proposed new uses and GFA in the building, a total of 85 vehicle parking spaces are required. As noted above, the Applicant requests flexibility to increase or decrease the amount of floor area in the building devoted to Entertainment use. Thus, the Applicant's vehicle parking calculations assume that the entire GFA of the building will be devoted to Entertainment uses, which has the highest parking requirement. The result is a parking requirement of 85 spaces.

As approved in the prior two BZA applications, the Applicant does not propose to locate any parking spaces within the building because it operates a 1,070-space private garage across Okie Street from the Site, which was constructed to be used by employees and visitors of the Site. As of the date of this filing, the garage has approximately 660 unrestricted/unreserved spaces and has an average of approximately 600 empty spaces per day. Thus, the Applicant continues to request special exception relief to not provide any on-site parking spaces.

Pursuant to BZA Case No. 19200A, the Board approved three loading berths (two at 30 feet deep and one at 55 feet deep), three loading platforms (two at 100 square feet and one at 200 square feet), and one loading platform (at 20 feet deep). As part of its existing building permit, the Applicant has already constructed the approved loading facilities. Pursuant to 11-C DCMR §§ 901.1 and 902.2, the existing loading facilities are consistent with the loading requirements for the proposed uses.

Finally, included for the record, and attached hereto as Exhibit B, are civil drawings showing all of the public space improvements that are being implemented on the Site.

V.
SPECIAL EXCEPTION RELIEF

As described above, the Applicant seeks special exception relief pursuant to 11-X DCMR § 901.2 to permit (i) Entertainment, Assembly, and Performing Arts uses in the PDR-1 District (11-U DCMR § 802.1(d)); (ii) nightclub, bar, cocktail lounge, or restaurant uses on the building's proposed roof decks (11-C DCMR § 1500.3); (iii) a reduction in the number of required on-site parking spaces (11-C DCMR § 703); and (iv) a rear yard depth of 4 feet, 9 inches whereas 12 feet is required (11-J DCMR § 205.2).

The standard of review for special exception relief and a description of how the application meets the individual and generalized tests for special exception relief under 11-U DCMR § 802.1(d), 11-C DCMR §§ 1500.3 and 703, 11-J DCMR § 205.2, and 11-X DCMR § 901.2 are set forth in detail in the Applicant's Statement of Compliance (Exhibit 3, pp. 4-10). Nothing has changed with respect to these areas of relief requested, so the Applicant has not restated the standards herein. Accordingly, the Applicant submits that the proposed project is in harmony with the purpose and intent of the Zoning Regulations and Zoning Map and meets the test for special exception relief under the above-stated sections of the Zoning Regulations.

VI.
VARIANCE RELIEF

Pursuant to 11-X DCMR § 1000.1, the Applicant seeks a variance from 11-U DCMR § 801.1(d)(3) to permit Entertainment, Assembly, and Performing Arts uses within 1,000 square feet of a property containing a live performance, night club, or dance venue. The burden of proof and a description of how the application meets that burden are set forth in detail in the Applicant's Statement

of Compliance (Exhibit 3, pp. 10-13). Nothing has changed with respect to this area of relief requested, so the Applicant has not restated the standards herein.

Accordingly, the Applicant submits that the Site is affected by an exceptional condition that results in practical difficulties in complying with the Zoning Regulations, and that the variance requested will not cause substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan.

VII. COMMUNITY SUPPORT

The Site is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 5D, with whom the Applicant has engaged for multiple years on the development and improvement of the Site. The Applicant presented the project at the ANC’s regularly scheduled and duly noticed public meeting of November 13, 2018, and at that meeting the ANC voted in support of the application. As of the date of this filing, the ANC has not yet filed a resolution on the case.

VIII. CONCLUSION

For the reasons stated above, the Applicant has demonstrated that its request for a modification of significance, including special exception and variance relief, is in harmony with the purpose and intent of the Zoning Regulations and Zoning Map and meets the tests for relief under the applicable sections of the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to approve the application.