BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of John R. Klein, II
Square 1971, Lot 825
ANC 3F05

STATEMENT OF THE APPLICANT

This Application is submitted by John R. Klein, II (**"Applicant")**, by his attorneys, Greenstein DeLorme & Luchs, P.C., by John Patrick Brown, Jr., Esquire and Lyle M. Blanchard, Esquire.

I. NATURE OF RELIEF SOUGHT

This is an application to permanently renew a special exception pursuant to 11 DCMR Subtitle X, §901.2 for an accessory parking lot (**"Accessory Parking Lot"**) under Subtitle U, §203.1 (k) and a variance pursuant to 11 DCMR Subtitle X, §1001.2 from the parking space and drive aisle dimension requirements under Subtitle C, §712.5 for continued use of an accessory parking lot in operation since 1948 and most recently approved by BZA Order No. 17527-A in the R-1-B District at premises (rear) 4418-4420 Connecticut Avenue, N.W. (Square 1971, Lot 825) (**"Property"**).

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (**"BZA" or "Board"**) has jurisdiction to grant the requested special exception relief pursuant to 11 DCMR Subtitle X, §901.2 under Subtitle U, §203.1(k) and variance relief pursuant to Subtitle X, §1001.2 of the Zoning Regulations.

Board of Zoning Adjustment
District of Columbia
CASE NO. 21553
EXHIBIT NO. 8

III. BACKGROUND AND PREVIOUS BZA APPROVALS

The Property, which is residentially zoned, has been used since 1948 as an Accessory Parking Lot for the commercially zoned businesses located at 4418-4420 Connecticut Avenue (currently ZIPS dry cleaning and office space). See Zone Map, **Exhibit A**. The Property was first approved for this use in 1961 and was most recently renewed in September 2016 (BZA Order No. 17527-A, dated September 22, 2016) for a period of ten years.

The Applicant proposes the permanent renewal of the Accessory Parking Lot to continue to serve the retail businesses fronting on Connecticut Avenue. The Property consists of one alley lot with 5,000 square feet of land and 19 parking spaces.[1] See Photos, **Exhibit B**. A 20 ft. wide two-way public alley (**"Alley"**) (See Surveyor's Plat, **Exhibit C**), accessible from Albermarle and Yuma Streets provides access to the Accessory Parking Lot. The Alley separates the parking spaces from the use it serves, the commercial businesses at 4418-4420 Connecticut Avenue (Lot 815), including the ground floor ZIPS Dry Cleaners and second floor office uses which are located in the MU-7B Zone District (**"Commercial Property" or "Commercial Businesses"**). Several other commercial properties along Connecticut Avenue also have accessory parking lots to the rear separated by the Alley. Immediately to the south of the Property is a three-story parking garage (Lot 26) to the rear of the Days Inn Hotel at 4400 Connecticut Avenue. This parking garage is vacant, fenced in and likely to be razed in the future. To the north is a surface parking lot (Lot 822) to the rear of the former Burger King Drive-Thru at 4422 Connecticut Avenue (Lot 29) which was recently razed and fenced in, parking lot (Lot 823) behind the Flagship Car Wash at 4432 Connecticut Avenue (Lot 817) and a surface parking lot (Lots 831 &

[1] The Parking lot is temporarily striped with twenty-one (21) parking spaces.

832) to the rear of Bread Furst at 4434 Connecticut Avenue (Lot 804) (BZA Order No. 18496). None of the surrounding accessory parking lots have pervious surfaces.

The Property has operated as a parking lot since 1948 and first approved by the Board in 1961. The BZA Orders are attached as **Exhibit D** and the history of approved zoning relief for the Accessory Parking Lot is listed below:

- BZA Order No. 6471 (1961) approved for 5 years
- BZA Order No. 16078 (1995) approved for 5 years
- BZA Order No. 16659 (2001) approved for 5 years
- Corrected BZA Order No. 16659 (2001) approved for 5 years
- BZA Order No. 17527 (2006) approved for 10 years
- BZA Order No. 17527-A (2016) approved for 10 years

IV. COMPLIANCE WITH BZA ORDER NO. 17527

The most recent approval of this Accessory Parking Lot by the Board was pursuant to BZA Order No. 17527-A. The Board granted the approval, subject to 12 conditions. The Applicant is generally in compliance with all of the conditions established by the Board, as set forth below, and requests the modification of Condition No. 1 to allow for a permanent renewal of the use, subject to the remaining conditions as revised.

Condition No. 1: The Board's approval shall be valid for a period of TEN (10) YEARS beginning on the effective date of this order.

> This condition is the subject of this Application. Order 17527-A approved the Accessory Parking Lot for a period of ten (10) years, with the order final and effective on October 2, 2016 and expiring October 2, 2026.

The Applicant requests a permanent renewal of the Accessory Parking Lot.

Condition No. 2: The Applicant shall provide up to 19 parking spaces, including one accessible space, in compliance with the American with Disabilities Act requirements and guidelines, on the site.

The current temporary striping of the parking lot is for twenty-one spaces, but the surface can be restriped for nineteen spaces in accordance with the previously approved parking and configuration. **Exhibit E**.

Condition No. 3: All areas, except the landscaped area, shall be maintained with a paving of material forming an all-weather impervious surface. The existing impervious material shall be replaced with pervious material between the eighth and ninth year of approval, or sooner, if major repaving activities are required.

Applicant is in compliance, but has not to date been able to install a pervious surface. As a condition to this approval, Applicant will submit the required building permit application to install a pervious in compliance with the 80% requirement in Subtitle U, §203.1(k)(4) within five years of the requested approval. This brief delay will allow Applicant to attempt to coordinate with the two adjoining properties that are vacant and subject to currently unknown future redevelopment.

Condition No. 4: All parts of the lot shall be kept free of refuse and debris. All wheel stops and signage shall be maintained, and damaged and bent wheel stops and signs shall be repaired and/or replaced.

Applicant is in compliance.

Condition No. 5: No vehicle or any part of a vehicle shall be permitted to project over any lot line or into the public space.

Applicant is in compliance.

Condition No. 6: The garbage container/dumpster shall not be permitted to project over any lot line or into the public space.

Applicant is in compliance.

Condition No. 7: Landscaping shall be provided as identified on the landscaping plan, Exhibit 7E of the record. The landscaping shall be maintained in a healthy, growing condition and in a neat and orderly appearance.

Applicant is in compliance. See Photos, **Exhibit B**.

Condition No. 8: No other use shall be conducted from or on the premises.

Applicant is in compliance.

Condition No. 9: Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting be confined to the surface of the parking lot.

There is no lighting.

Condition No. 10: The Applicant shall provide to the ANC-3F an annual report demonstrating compliance with the conditions of this order.

Applicant has not provided annual reports to ANC 3F. During the course of the expiring BZA approval, Applicant has not received any complaints or requests for information from ANC 3F or any other parties.

Condition No. 11: The Applicant shall post a "Compact Vehicles Only" sign at the entry to the parking lot and shall also mark the parking spaces as "Compact Vehicles Only."

Compact vehicle signs are posted at various locations in the parking lot. See Photos, **Exhibit B.**

Condition No. 12: The Applicant will preserve a potential future pass-through space for a possible drive aisle connection to the adjacent parking lot as shown on the Revised Parking Plan. (Exhibit 41.) The Applicant shall have flexibility to modify the plans approved by the Board for the purpose of creating a drive aisle connection to the adjacent parking lot.

The Applicant was not able to reach any agreement with the owner of the adjacent parking lot behind the former Burger King site which has recently been razed. The Burger King property and related parking lot are currently vacant and for sale for unspecified future redevelopment.

V. THE APPLICANT IS ENTITLED TO SPECIAL EXCEPTION RELIEF UNDER THE ZONING REGULATIONS

As the Board is aware, uses that are allowed by special exception are deemed compatible with other uses permitted in the applicable zoning district provided certain requirements are met. In reviewing an application for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements set forth therein. If the prerequisites set out in particular regulations are satisfied, the Board must ordinarily grant the application. See e.g. Bakers Local Union. No. 118 v. D.C. Board of Zoning Adjustment, 437 A.2d 176, 178 (D.C. 1981).

As set forth below, the requested permanent approval of special exception relief in this case is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of nearby properties.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR A SPECIAL EXCEPTION UNDER SUBTITLE U, §203.1(k) AND SUBTITLE X, §901.2

Section 203.1(k) of the Zoning Regulations permits the use of a parking lot as a special exception in an R-1 District if approved by the Board of Zoning Adjustment under §901.2.

A. COMPLIANCE WITH §203.1(k)

The Accessory Parking Lot meets the required standards pursuant to §203.1(k) as demonstrated below:

> (k) Parking as a principal use, or accessory parking elsewhere than on the same lot as the principal use, subject to the following conditions:
>
> (1) Parking garages shall not be permitted; parking spaces shall be in an open parking lot area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade;
>
> **The surface Accessory Parking Lot is located in an open area.**
>
> (2) All parking shall meet the conditions of Subtitle C, Chapter 7;
>
> **The Accessory Parking Lot complies with Subtitle C, Chapter 7, except for the variance relief requested.**
>
> (3) No commercial advertising signs shall be permitted outside a building, except a sign advertising the rates as required by Chapter 6 of Title 24 DCMR, Public Space and Safety;
>
> **No commercial advertising is provided**.
>
> (4) At least eighty percent (80%) of the parking surface shall be of pervious pavement;
>
> **As a condition to this approval, Applicant will submit the required building permit application to install a pervious surface in compliance with the 80% requirement in Subtitle U, §203.1(k)(4) within five years of the requested approval. This brief delay will allow Applicant to attempt to coordinate with**

the two adjoining properties that are vacant and subject to currently unknown future redevelopment.

(5) Accessory parking shall not be accessory to "parking as a principal use";

The Accessory Parking Lot is accessory to the adjacent commercial uses at 4418-4420 Connecticut Avenue, NW.

(6) The applicant shall demonstrate the following:

(A) The 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;

(B) The present character and future development of the neighborhood will not be affected adversely; and

(C) The parking is reasonably necessary and convenient to other uses in the vicinity;

The accessory parking lot has been in use since 1948 and continuously BZA–approved since 1961 and is an integral part of the long–standing commercial properties fronting on Connecticut Avenue. The parking lot and the businesses that it serves are important neighborhood-serving retail uses. Operation of the parking lot provides much needed parking and contributes to preventing objectionable conditions.

(7) Parking as a principal use shall be subject to the following conditions:

(A) All parking shall be located in its entirety within two hundred feet (200 ft.) of an existing MU, NMU, D, or PDR zone;

The Accessory Parking Lot is located 20 feet from an existing MU-7B zone on Connecticut Avenue.

(B) The lot shall be contiguous to or separated only by an alley from a MU, NMU, D, or PDR zone; and

The Accessory Parking Lot is separated by a 20 feet public alley from the existing MU-7B zone.

(C) A majority of the parking spaces shall serve residential uses or short-term parking needs of retail, service, and public facility uses in the vicinity;

The Accessory Parking Lot is for the exclusive use of the customers, employees and visitors to the commercial property at 4418-4420 Connecticut Avenue, NW.

(8) Accessory parking shall be subject to the following condition:

(A) All parking spaces shall be located in their entirety within two hundred feet (200 ft.) of the area to which they are accessory; and

(B) All parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory;

The Accessory Parking complies with these conditions.

(9) The Board of Zoning Adjustment may require that all or a portion of the parking spaces be reserved for the following:

(A) Residential parking;

(B) Unrestricted commercial parking;

(C) Accessory parking for uses within eight hundred feet (800 ft.); and

(D) Shared parking for different uses by time of day; conditioned on lighting to reduce impacts on adjoining properties;

The Accessory Parking Lot is for the exclusive use of the commercial uses at 4418-4420 Connecticut Avenue.

(10) In the R-1B/GT and R-3/GT zones, no commercial parking lots shall be permitted; and

This restriction does not apply to the Accessory Parking Lot located in the R-1-B zone.

(11) The application shall be referred to the District Department of Transportation for review and report;

This application will be referred to DDOT by the Certificate of Service provided.

B. COMPLIANCE WITH SUBTITLE X, §901.2

As set forth below, the Accessory Parking Lot continues to comply with the standards, pursuant to Subtitle X, §901.2, that the BZA must follow when reviewing and approving a special exception.

Will the special exception be in harmony with the general purpose and intent of the Zoning Regulations and Maps? Will the special exception tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps?

The Accessory Parking Lot continues to be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The R-1 District is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining areas likely to be developed for those purposes. The Accessory Parking Lot has operated at the Property since 1948. It is located on an alley and has no street frontage. The intent of the Zoning Regulations will not be jeopardized by continuing this longstanding use since the Accessory Parking Lot is screened and buffered from the adjacent residential area to the west. As a result, the continued use of the Accessory Parking Lot will not cause objectionable conditions nor will this use adversely affect neighboring or nearby property.

VII. THE APPLICATION MEETS THE REQUIREMENTS FOR THE REQUESTED VARIANCE RELIEF UNDER SUBTITLE X, §1001.2 FROM THE REQUIREMENTS UNDER SUBTITLE C, §712.5

The Property has been used as a parking lot since 1948. For most, if not all the 78 years of service, the parking configuration has not complied with the 1958 Regulations and now the

2016 Regulations, including the parking space dimension and drive aisle width requirements. Specifically, to maintain the current approved 19-space parking plan, area variance relief would be required from the provisions of:

1. Subtitle C, §712.5: 9’ x 18” Parking Space Dimensions for 90 degree angle spaces.

2. Subtitle C, §712.5: 20-foot drive aisle width.

As set forth below, the Applicant meets the area variance test. The burden of proof for an area variance is well established. The D.C. Court of Appeals has distilled a three-part test that “[i]n order to obtain [area] variance relief, an applicant must show that (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Washington Canoe Club v. District of Columbia Zoning Com'n*, 889 A.2d 995, 1000 (D.C.2005).

A. <u>The Property is Affected by an Exceptional Situation or Condition.</u>

The Property has operated for at least 78 years as an accessory parking lot for the commercial property across the public alley from 4418-20 Connecticut Avenue. The commercial property has 100% lot occupancy and has never had any parking. The parking lot is 50’ x 100’. Although it has historically been used for two rows of parking spaces, the existing narrow width of the lot cannot accommodate two rows of 18’ long parking spaces separated by the required 20’ wide drive aisle. The previously approved Parking Plan provides for two rows of 16’ long parking spaces separated by an 18’ wide drive aisle. The increased 9’ width of the

parking spaces, 2' wider drive aisle and the 90 degree angled spaces provide more efficient vehicular circulation and eliminates the need for vehicles to back into the alley. Exhibits B and C. Also, the size of the Property (50' x 100') is too small to provide the minimum 40 parking spaces to be eligible to use compact parking spaces.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty.

The requested relief from the parking space dimension, compact parking threshold, and drive aisle requirement for the Property are for area variances, which require the Applicant prove the strict application of the zoning regulations for complying with the requirements will result in a "practical difficulty." It is important to note how the DC Court of Appeals has defined "practical difficulty." In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in *Palmer v. D.C. Bd. Of Zoning Adjustment*, 287 A. 2d 535, 542 (D.C. 1972) that, "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [footnote omitted]. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only the "the lower 'practical difficulty' standards." *Tyler v. D.C. Bd. Of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. Of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider " . . . a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' . . ." *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict

compliance with regulations is burdensome, not impossible. The Applicant, as demonstrated below, meets this standard.

As a result of the narrow width (50') of the Property, compliance with the parking space dimension, compact parking space threshold, and drive aisle width requirements would only allow a single row of 90 degree angle standard (9' x 19') parking spaces. At least half of the currently provided parking spaces would be eliminated. This would dramatically reduce the parking available for neighborhood customers of the commercial tenants, including specifically, the ZIPS dry cleaners. Alternative off-street parking is not available and the lack of convenient parking would have an immediate and continuing negative impact on the commercial tenants and the nearby residential areas.

Additionally, the Applicant under the existing leases is contractually required to provide a total of seventeen parking spaces for the tenants. Inability to provide the required parking would automatically cause a lease default, claims for damages and/or lease termination.

C. <u>Relief Can Be Granted Without Adversely Affecting the Use of Neighboring Property in Accordance with the Zoning Regulations and Zoning Map.</u>

After 68 years, the parking lot and the current approved 19 parking spaces are well established and an important resource to the neighborhood and its commercial businesses. The zoning relief requested is directly responsive to previous comments from ANC 3F, OP and DDOT. This will not create any new use, rather it will make the existing parking lot operate more efficiently. The improved circulation and elimination of vehicles backing into the alley will enhance safety, increase customer convenience and improve operation of the well used public alley. Implementation of the approved Parking Plan will benefit the neighborhood and its commercial businesses.

VIII. EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A: Zoning Map.

Exhibit B: Photos.

Exhibit C: Surveyor's Plats (including the Surveyor's Plat from BZA Case 17527).

Exhibit D: BZA Orders.

Exhibit E: 2016 BZA Approved Parking Plan.

IX. CONCLUSION

For the reasons stated above, the requested relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not adversely affect the use of neighboring property.

Respectfully Submitted,
GREENSTEIN DELORME & LUCHS, P.C.

By: _____
John Patrick Brown, Jr.

By: _____
Lyle M. Blanchard