

STATEMENT OF BURDEN OF PROOF

SPECIAL EXCEPTION

BB&H Joint Venture, on behalf of Potomac Foods Company – II, Inc. (together, the “Applicant”) requests a special exception to continue the parking lot use of the property located at the rear of 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822) (the “Property”). The use originally was approved in 1994 by Order No. 16000 for a period of five years and was renewed in 2000 for four years by Order No. 16541, in 2004 for four years by Order No. 17200, in 2009 for three years by Order No. 17875, and in 2014 for three years by Order No. 18741. The Property has been in continuous operation as a surface parking lot with minimal impact on the neighborhood since 1982.

In order to meet the burden of proof for a special exception under 11-X DCMR § 901, an applicant must demonstrate that the proposed use will be in harmony with the general purpose of the Zoning Regulations and will not tend to affect adversely the neighboring property. The special exception, if granted, will not detrimentally affect the public good or substantially impair the intent, purpose, and integrity of the zone plan because it meets the criteria of 11-U DCMR § 203(j) set forth below.

The Applicant is entitled to a special exception pursuant to 11-U DCMR § 203(j) because it can demonstrate: 1) the parking lot is in an open area, no portion of which extends above the level of the adjacent finished grade; 2) the parking lot satisfies the conditions of Subtitle C, Chapter 7; 3) the parking spaces are located across an alley from the Burger King building at 4422 Connecticut Avenue, N.W., to which the parking spaces are accessory; 4) there will be no adverse traffic, noise, or other objectionable impacts resulting from the location of accessory parking spaces on the subject site; 5) the present character and future development of the neighborhood will not be adversely affected; 6) the parking spaces are reasonably necessary and convenient to other uses in the vicinity; 7) the parking spaces are located in their entirety within 200 feet of the area to which they are accessory; and 8) all parking spaces are separated only by an alley from the use to which they are accessory. The Property does not currently meet the requirement of 11-U DCMR § 203(j)(4), but will concurrently request an area variance.

AREA VARIANCE

Applicant requests an area variance in connection with the above special exception. An area variance is necessary to receive a special exception without meeting the requirement of 11-U DCMR § 203(j)(4).

In order to meet the burden of proof for an area variance under 11-X DCMR § 1002, an applicant must demonstrate that an area variance is justified because the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of the Property. 11-U DCMR § 203(j)(4) would require that the accessory parking lot be repaved with pervious paving prior to the granting of a special exception. This would result in peculiar and exceptional practical difficulties to the owner of the Property for three reasons: (i)

Applicant's continued use and ownership of the Property depends on approval of the special exception. Repaving is a major capital project that requires substantial investment and costs related to closing or impeding operations at the restaurant during the repaving. Bearing these costs without assurance the special exception would be approved would create uncertainty and economic hardship for applicant; (ii) The prior special exception governing the accessory parking lot is currently expired. Applicant wishes to return to compliance with zoning regulations as soon as possible. The accessory parking lot is a component of a block of parking lots which are likely to require coordination with other owners. Requiring repaving before approval of the special exception would require substantial time for coordination with other property owners and extend the time the accessory parking lot is out of compliance with regulations, imposing a hardship; and (iii) Applicant will realize substantial economic savings and require fewer days closed if the repaving is conducted as part of the comprehensive renovation Applicant has committed to following the special exception. Requiring that repaving occur separately from the renovation would create a hardship by imposing substantial extra costs.

Please note that the special exception request includes a commitment by Applicant to repave with pervious paving within 3 years of the approval of the exception.