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September 14, 2016

VIA IZIS AND HAND DELIVERY

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Request for Modification of Consequence to Approved BZA Plans
1401 Okie Street, NE (Square 4093, Lot 832)**

Dear Members of the Board:

This letter is submitted on behalf of Jemal's Pappas Tomato's, L.L.C. (the "Applicant"), pursuant to Subtitle Y § 703 of the 2016 Zoning Regulations ("ZR16") in order to request a Modification of Consequence to the plans approved by the Board of Zoning Adjustment ("BZA" or the "Board") in BZA Order No. 19200, for property located at 1401 Okie Street, NE (Square 4093, Lot 832) (the "Site"). The Applicant proposes to modify the approved plans by incorporating a partial third-story addition on the west side of the building. The modified plans do not create any new areas of zoning relief or increase the zoning relief approved in BZA Order No. 19200. The Site is located in the PDR-1 District (the C-M-1 District under the 1958 Zoning Regulations ("ZR58")).

Attached hereto as Exhibit A is a letter from the Applicant authorizing the law firm of Holland & Knight LLP to file and process this application. Pursuant to Subtitle Y § 1600.1(e), a check in the amount of \$946.40 is also included.

I. Background of Case

Pursuant to BZA Order No. 19200, dated March 1, 2016, and effective on March 3, 2016 (Exhibit B), the Board granted a variance from the off-street parking requirements of Section 2101.1 of ZR58 to allow for the adaptive reuse of the 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 largely on the fact that the Applicant's development company (Douglas Development Corporation) had already constructed a seven-story above-ground parking garage

across the street from the Site. The parking garage contains over 1,000 parking spaces and was built to accommodate future development at the Site.

The approved plans structurally preserved the existing building and included a number of renovations that resulted in approximately 54,521 square feet of gross floor area (0.69 FAR) and approximately 55,857 square feet of cellar floor area. The maximum building height was maintained at 35 feet and two stories. The renovated building complied with all applicable Zoning Regulations, except for parking.

Before the Board's public hearing on the application, the Applicant appeared before Advisory Neighborhood Commission ("ANC") 5D to present the project. At its regularly scheduled, duly noticed public meeting of January 12, 2016, ANC 65D voted unanimously (7-0-0) to support the application. By report dated February 23, 2016, the Office of Planning also submitted a report in support of the application.

II. Proposed Modification of Plans

As shown on the revised and comparative architectural drawing sheets attached as Exhibit C (the "Revised Plans"), and pursuant to Subtitle Y § 703.4, the Applicant requests a Modification of Consequence to redesign the architectural elements from the final design approved by the Board. Specifically, the Applicant proposes to add a new third-story addition to a portion of the west side of the building, and to reconfigure the uses within the building to incorporate office use. These changes result in relocated core elements, shifted penthouses at the roof levels, reconfigured partitions within the retail space to accommodate the office use, and reconfigured loading facilities. The revised building will have approximately 73,244 square feet of gross floor area (0.93 FAR) and approximately 51,582 square feet of cellar floor area. The maximum building height will be increased to 40 feet.

Pursuant to Subtitle C § 700, the revised plans generate a total parking requirement of 43 on-site spaces. This is a significant reduction from the 223 parking spaces required under ZR58, in part because the parking requirement for retail use was reduced significantly in ZR16. The building height, density, setbacks, loading, and penthouses all comply with ZR16, such that no additional areas of zoning relief are generated by the revised plans.

III. Community Support

The Applicant notified the Single Member District Commissioner for ANC 5D01 of its request for a modification of plans on September 1, 2016, prior to filing the application. The Applicant is scheduled to present at an upcoming meeting hosted by the SMD Commissioner and then at the regularly-scheduled public meeting of ANC 5D.

IV. Compliance with Subtitle A § 102 and Subtitle Y § 703

The Applicant's request for a Modification of Consequence of BZA Order No. 19200 complies with the relevant subsections of Subtitle A § 102 Subtitle Y § 703 as follows:

- **Subtitle A § 102.4** – *An application to the Board of Zoning Adjustment or the Zoning Commission for a modification other than a minor modification to a vested project shall conform with the 2016 Zoning Regulations.*

This application is for a Modification of Consequence, as defined in Subtitle Y § 703.4, and conforms with the 2016 Zoning Regulations in all respects except for the parking relief previously approved in BZA Order No. 19200 and significantly reduced herein.

- **Subtitle Y § 703.2** – *The procedure shall allow the Board, in the interest of efficiency, to make, without public hearing, technical corrections, minor modifications, or modifications of consequence to previously approved final orders including any plans approved in such orders (emphasis added).*

The Applicant requests that the Board approve a Modification of Consequence to the plans approved in BZA Order No. 19200.

- **Subtitle Y § 703.4** – *For purposes of this section, the term “modification of consequence” shall mean a proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board (emphasis added).*

The application complies with the definition of a Modification of Consequence because it requests a redesign of the architectural elements from the final design approved by the Board in BZA Order No. 19200.

- **Subtitle Y § 703.5** – *Any party to a previously filed case in which an order has been issued may make a motion in writing to have a matter placed on the Consent Calendar.*

The Applicant herein requests that the matter be placed on the Consent Calendar.

- **Subtitle Y § 703.6** – *An application for a technical correction, minor modification, or modification of consequence approval shall be made in an appropriate manner provided by the Director. The applicant shall furnish two (2) copies of all information required by the form at the time of filing the application, including the following:*

- A completed application form;*
- The nature of, reason(s), and grounds for the technical correction, minor modification, or modification of consequence;*
- A copy of any Board final order, map, plan, or other action or relief proposed to be modified or corrected; and*

d. Proof of service to all parties

Consistent with Subtitle Y § 703.4, a copy of the application form has been completed on IZIS and is included with the case record. The nature of the Modification of Consequence is described herein and shown on the Revised Plans attached hereto as Exhibit C. A copy of BZA Order No. 19200 is attached hereto as Exhibit B. This request was served on all parties to the original application, as evidenced by the attached Proof of Service. The only party to the original application was ANC 5D.

- **Subtitle Y § 703.7** – *No application for technical corrections, minor modifications, or modifications of consequence shall be processed until the application is complete and all required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Y, Chapter 16.*

A filing fee of \$946.40 is enclosed herewith. This fee represents 26% of the original filing fee of \$3,640.00 submitted with BZA Application No. 19200, in accordance with Subtitle Y § 1600.1(e).

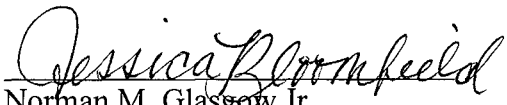
- **Subtitle Y § 703.14** – *The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.*

The final date of BZA Order No. 19200 is March 1, 2016, and it became effective on March 3, 2016. This modification is filed within the two year effective period of BZA Order No. 19200.

We would appreciate your consideration of this matter at the next available public meeting. Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact me.

Very truly yours,

HOLLAND & KNIGHT LLP


Norman M. Glasgow Jr.
Jessica R. Bloomfield

Enclosures

PROOF OF SERVICE

I hereby certify that on September 14, 2016, a copy of this request for a Modification of Consequence to approved BZA plans was served on the following parties to the original case via U.S. Mail and Email:

Karen Thomas
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Advisory Neighborhood Commission 5D
c/o Commissioner Peta-Gay Lewis
Single Member District Commissioner 5D01
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