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January 16, 2009

BY HAND DELIVERY

Jerrily R. Kress, FAIA
Director, D.C. Board of Zoning Adjustment
Office of Zoning
441 - 4th Street, N.W., Suite 210
Washington, DC 20001

RE: **Application No. 17875**
Pre-Hearing Statement of the Applicant, BB& H Joint Venture, on behalf of
Potomac Foods Company - II, Inc., for Continued Use of a Parking Lot
Accessory to an Existing Burger King Restaurant - (Square 1971, Lot 822)

Dear Ms. Kress:

Enclosed please find the pre-hearing statement of the applicant in the above-referenced BZA Application. The applicant looks forward to presenting its case to the Board at the public hearing on February 3, 2009.

Very truly yours,

Laura N. Begun

LNB
Enclosure

ANC 3F (office) - by hand
Arthur Jackson, Office of Planning - by electronic mail and first class mail
Brian Timmons, Potomac Foods - by mail

*Sweeping proposal for trash dumped - so it remained in place
Name of Brian Timmons
When was I sent to ANC*

*Sweeping
under 214 2300
2303.5*

*Are you on site
who lets them into
restaurant?*

*You are aware that
Mrs. Troutman's notes
are in 2008 2008?*

*How long has
been on site*

how close a trash truck exit alley

*when applicant
cloves need
at my up!*

*I believe your trailer
truck is semi trailer
are you aware
that trucks
enter
this
alleyway*

*Are you aware that
Conn. even has
regulation
fund for trucks*

*Clare Willis
District Manager*

*trash
truck*

*Brian Timmons
Submission
w/ needed
to conditions
received 2009
March 3rd*

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

**Application of BB& H Joint Venture
on behalf of Potomac Foods Company – II, Inc.**

**Application No. 17875
Public Hearing: February 3, 2009
ANC 3F**

STATEMENT OF THE APPLICANT

I. Nature of Relief Sought

The subject site is located in Square 1971, Lot 822, at premises known as the rear of 4422 Connecticut Avenue, N.W. (the "Property"). BB&H Joint Venture is the owner of the Property. Potomac Foods Company – II, Inc. leases the Property and operates the surface parking lot located on the Property. Applicant requests a special exception under Section 214 of the Zoning Regulations to permit the continued use of the Property for accessory parking provided certain conditions are met. By Order No. 17200 dated November 5, 2004, the Board of Zoning Adjustment ("Board") approved the continued use of the site as a parking lot for a period of four (4) years, subject to certain conditions. The Applicant initially wished to renew this special exception for an indefinite period. After discussions with the Office of Planning, the Applicant understands that the Office of Planning supports a renewal for ten (10) years. The Applicant requests renewal of this special exception for a period of ten (10) years unless there is no objection to an indefinite approval.

II. Jurisdiction of the Board

The Board has jurisdiction pursuant to § 3104.1 to grant the requested special exception relief.

III. Background

The Applicant requests a special exception to continue use of the Property as accessory parking for the Burger King restaurant located at 4422 Connecticut Avenue, N.W ("Restaurant").

The Property has been in continuous operation as accessory parking for the Restaurant with minimal impact on the neighborhood since it was approved in 1982. The lot has been well maintained since that time. The Board approved the use as an accessory parking lot in 1994 for a period of five (5) years by Order No. 16000. The Board renewed the use in 2000 for four (4) years by Order No. 16541. The Board renewed the use in 2004 for a period of four (4) years by Order No. 17200 (2004 Order"). A copy of the 2004 Order is attached as **Exhibit A**.

IV. Description of Property and Proposed Use

The Property is located in the Van Ness neighborhood in the R-1-B Zone District. The surrounding area includes several low-scale retail establishments such as a car wash, a realtor's office, and a dry cleaning establishment. Several single-family homes front on 35th Street, located behind the Property.

The Property is situated behind the Restaurant and is separated from the Restaurant by a public alley. The Property contains 9,100 square feet of land area. As shown at **Exhibit B**, the Property provides sixteen parking spaces and requires one-way traffic circulation. A wooded area, landscaped with grass, bushes and several mature trees, buffers the parking lot use from the residential uses from the rear. The residential uses are further buffered by fences and the rear yard of a private garage. Photographs of the Property are attached as **Exhibit C**.

The Applicant has recently made improvements on the Property in response to remarks made by the Office of Planning during a site visit. The Applicant is not aware of any other concerns regarding maintenance of the Property.

V. Compliance with the Requirements of § 3104.1 and § 214 of the Zoning Regulations

In order to meet the burden of proof for a special exception under § 3104.1, an applicant must demonstrate that the proposed use will be in harmony with the general purpose and intent

of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of the neighboring property, subject to the special conditions specified for the particular case. Here, the requested special exception, if granted, complies with § 3104.1 and meets the special condition provisions of 11 DCMR § 214.

A. Section 3104.1

The special exception, if granted, will not detrimentally affect the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map. The Property has been used as a parking lot since 1982, over twenty-six years, with minimal impact on neighboring properties, traffic in the area, or the zone plan. Further, the proposed use is well-maintained and adequately buffered from adjacent residential uses. The fences, garage wall and trees located on the western border of the Property provide a significant buffer for the neighboring residential properties. *See Photographs attached as Exhibit C.*

B. Section 214

The proposed use should be approved because it meets the requirements of § 214.

1. Section 214.2: The parking lot is an open area, no portion of which extends above the level of the adjacent finished grade.
2. Section 214.3: The parking spaces are located in their entirety within 200 feet of the area to which they are an accessory.
3. Section 214.4: The parking spaces are separated from the Restaurant by only an alley.
4. Section 214.5: The parking lot satisfies the requirements of Chapter 23 of the Zoning Regulations. The parking lot's surface is paved with materials that form an all-weather, impervious surface, and it is designed so that there are no vehicles that project over any

building or lot line. The surface of the parking lot as been well-maintained and is in good condition. There are no other uses and no structures on the Property, and there are no vehicular entrances within forty feet of any intersection. The lighting is directed entirely on the surface of the parking lot. All parts of the lot are cleaned regularly. Landscaping on the property line is well-maintained in a healthy, growing condition. The parking lot does not provide a forty-two inch high wall along the western border of the Property, which abuts the residential properties. The Applicant received a waiver from this requirement in a past application. The Property remains adequately buffered from adjacent residential uses by wooden fences, the garage wall, and landscaping such as trees and bushes. *See* Photographs attached as **Exhibit C**.

5. Section 214.6: The Restaurant's main parking lot provides only eight parking spaces, which is not sufficient to provide adequate parking for the Restaurant's customers. It is not feasible to locate additional accessory spaces on the main lot.
6. Section 214.7: There will be no adverse traffic, noise, or other objectionable impacts resulting from the location of accessory parking spaces on the subject site. The Property has been used as accessory parking for the Restaurant for more than twenty-six years and has been operated with minimal impact on neighboring properties. The parking lot decreases the likelihood of objectionable traffic because it encourages customers of the Restaurant to park their cars in the parking lot rather than on the neighboring residential streets.

VI. Community Input

After submission of its application, the Applicant attempted to contact the ANC on numerous occasions by phone. Upon receipt of the Board's November 20, 2008 letter regarding

acceptance of the Application, the Applicant attempted to contact the ANC with further calls, an e-mail and two letters delivered by Federal Express. Copies of the e-mail and letters are attached as **Exhibit D**. The Applicant has not received a response from the ANC despite its many invitations for discussions and/or meetings.

VII. Witness

The Applicant will present its Application to the Board by counsel. Clara Willis, District Manager, will also be available for witness testimony as to the day-to-day operation of the Property.

VIII. Supporting Exhibits

Exhibit A: 2004 Order (BZA Order No. 17200)

Exhibit B: Property map

Exhibit C: Photographs of the Property

Exhibit D: Correspondence with ANC (E-mail dated November 24, 2008; letter dated December 17, 2008; letter dated January 12, 2009)

IX. Proposed Conditions

1. The Application will be approved for a period of **TEN (10)** years unless there is no objection to an **indefinite** approval.
2. Deliveries and trash pick-up shall be limited to the hours of 10:00 a.m. to 6:00 p.m. daily.
3. Trash pick-up shall occur at least three times per week. The number of pick-ups shall be increased if the dumpsters are overflowing on a regular basis between pick-ups.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day or more often if they are overflowing with trash.
5. All parts of the lot shall be kept free of refuse and debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a

neat and orderly appearance, and the trees located on the Property shall be pruned as needed.

6. An exterminator shall perform extermination services to control any rodents as needed.

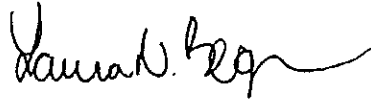
In addition, Applicant shall maintain the portion of the fence owned by the Applicant and located on the Property as needed to help prevent any rodents from entering the neighbors' properties.

7. The Applicant shall notify the ANC if the current liaison, Brian Timmons, is no longer designated to act as the liaison, and shall notify the ANC of his successor.
8. The Applicant shall replace wheel stops that become non-existent or misplaced.
9. The Applicant shall repaint and maintain the entrance and exit directional arrows on the surface of the parking lot as needed.

X. Conclusion

For the foregoing reasons, Applicant respectfully requests that the Board approve the Application.

Respectfully submitted,



Laura N. Begun

January 16, 2009

EXHIBIT A

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 17200 of Potomac Foods, pursuant to 11 DCMR § 3104.1, for a special exception to permit the continued use of an accessory parking lot (last approved by BZA Order No. 16541) serving an existing Burger King restaurant under section 214, in the R-1-B District at the rear of 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822).

HEARING DATE: October 5, 2004
DECISION DATE: November 2, 2004

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a resolution of conditional no objection to the application. The Office of Planning (OP) and Department of Transportation submitted reports in conditional support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 214. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1 and 214, that the requested relief can be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further

concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS**:

1. The application shall be approved for a period of **FOUR (4) YEARS**.
2. Deliveries and trash pick-up shall be limited to the hours of 10:00 a.m. to 6:00 p.m. daily.
3. Trash pick-up shall occur at least three times per week. The number of pick-ups shall be increased if the dumpsters are overflowing on a regular basis between pick-ups. On each of the dumpsters, the side door facing the western property line shall be welded closed.
4. Two trash cans shall be maintained on the parking lot and emptied at least once per day or more often if they are overflowing with trash.
5. All parts of the lot shall be kept free of refuse and debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance, and the trees located on the Property shall be pruned at least once per year.
6. An exterminator shall perform monthly extermination services to control any rodents. In addition, the portion of the fence owned by the Applicant and located on the Property shall be reinforced underground to help prevent any rodents from entering the neighbors' properties.
7. A cable or chain shall be installed to close the entrance of the parking lot at times when the parking lot is not needed for operation of the restaurant.
8. The Applicant shall appoint a neighborhood and ANC liaison. The Applicant shall notify the ANC and all residences within 200 feet of the Property of the name, telephone number, and e-mail address of the appointed liaison. When that individual is no longer designated to act as the liaison, the Applicant shall use the same procedure to notify the neighborhood of his or her successor.
9. The Applicant shall provide to the ANC and the residences within 200 feet an annual report summarizing its compliance with the conditions.
10. The Applicant shall replace non-existent or misplaced wheel stops.

11. The Applicant shall repaint and maintain the entrance and exit directional arrows on the surface of the parking lot.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller and John A. Mann II to approve, Curtis L. Etherly Jr. and John G. Parsons to approve by proxy vote).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: November 5, 2004

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF

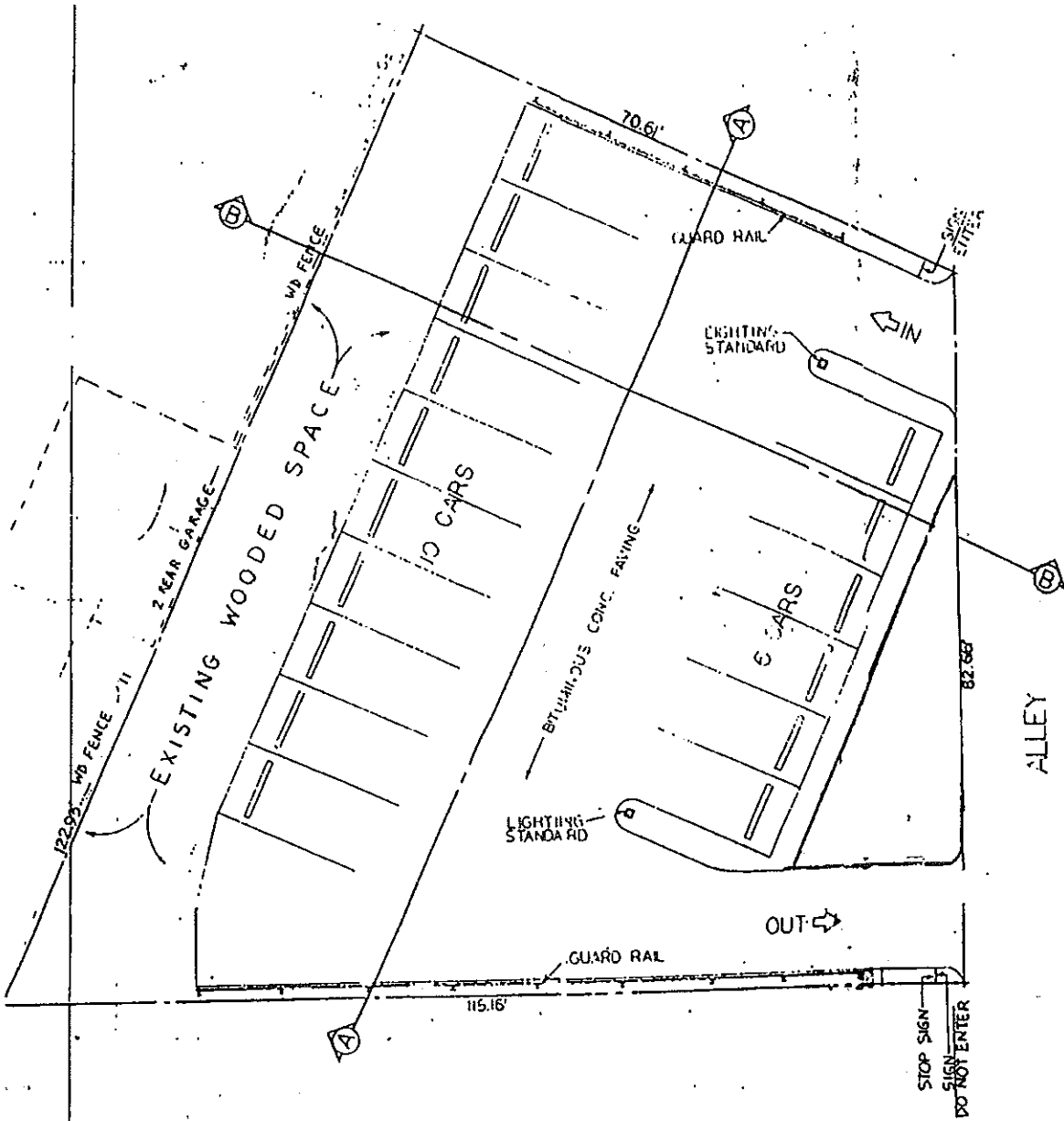
BZA APPLICATION NO. 17200

PAGE NO. 4

RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

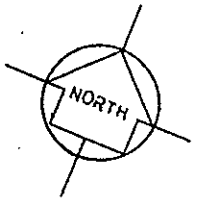
EXHIBIT B

SCALE: 1/8" = 1'-0"



LOT 827
SQ 1971
AREA 9099.6 SQ

ADDITIONAL PARKING SPACE
SCALE: 1" = 10'-0"



TYPE FRONT PARKING SPACES

DRAWN

EXHIBIT D

Begun, Laura N.

From: Begun, Laura N.
Sent: Monday, November 24, 2008 10:56 AM
To: 'anc3F@juno.com'
Cc: Hagerly, Richard E.; Pollak, Richard M.
Subject: BZA Application No. 17875 - Burger King Parking Lot

Dear ANC 3F:

I represent BB&H Joint Venture/Potomac Foods Company - II, Inc. regarding its application for a special exception permit to continue using an accessory parking lot serving a Burger King Restaurant on Connecticut Avenue. We recently received notice that the hearing is scheduled for February 3, 2009. I attempted to contact the ANC on numerous occasions by phone since submission of the application, but have been unable to reach anyone or leave a message. Thus, please forgive my introduction via e-mail.

I would like to speak to the ANC regarding the application at your earliest convenience. If the ANC has any issues or concerns, I look forward to addressing and resolving those issues or concerns. I look forward to hearing from you.

Regards,

Laura N. Begun, Esq.
Troutman Sanders LLP
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McLean, VA 22102
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December 17, 2008

FILE

VIA FEDERAL EXPRESS

Susan Banta
ANC 3F Commissioner
4401-A Connecticut Avenue, NW, # Box 244
Washington, DC 20008-2322

Susan Banta
3500 Springland Lane, NW
Washington, DC 20008

**Re: Application No. 17875 – Parking Lot Accessory to Existing Burger King
Restaurant located at 4422 Connecticut Avenue, N.W.**

Dear Ms. Banta:

On September 4, 2008, BB& H Joint Venture, on behalf of Potomac Foods Company - II, Inc. (together, the "Applicant"), submitted Application No. 17875 (the "Application") seeking a special exception to permit the continued use of a parking lot accessory to the existing Burger King restaurant located at 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822) (the "Property"). We represent the Applicant.

As you know, a public hearing on the Application is scheduled for Tuesday, February 3, 2009. I hope to speak with you regarding the Application and any matters of interest to ANC 3F in advance of the hearing and prior to ANC 3F's submission of any comments to the Board of Zoning Adjustment. Also, I would like to discuss with you some possible changes to the Application that are dependent on your input.

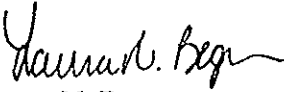
Please note that the Applicant's neighborhood and ANC liaison is Brian Timmons. Mr. Timmons can be reached at (301) 721-2900, or by e-mail at briant@potomacfoodsgroup.com.

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SANDERS

Ms. Susan Banta
December 17, 2008
Page 2

I look forward to hearing from you.

Very truly yours,


Laura N. Begun

LNB

Enclosures

cc: Brian Timmons (via e-mail)
Richard Pollak (via e-mail)

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LAURA N. BEGUN
703.734.4350 telephone
laura.begun@troutmansanders.com

TROUTMAN SANDERS

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January 12, 2009

VIA FEDERAL EXPRESS

Susan Banta
ANC 3F Commissioner
4401-A Connecticut Avenue, NW, Box # 244
Washington, DC 20008-2322

Susan Banta
3500 Springland Lane, NW
Washington, DC 20008

**Re: Application No. 17875 – Parking Lot Accessory to Existing Burger King
Restaurant located at 4422 Connecticut Avenue, N.W.**

Dear Ms. Banta:

This letter follows my letter of December 17, 2008, which requested a discussion with the ANC regarding Application No. 17875 (the "Application"). The Application seeks a special exception to permit the continued use of a parking lot accessory to the existing Burger King restaurant located at 4422 Connecticut Avenue, N.W. (Square 1971, Lot 822) (the "Property").

On behalf of the Applicant, I would like to renew my request for a discussion or meeting with the ANC prior to its submission of a written report to the Board of Zoning Adjustment. Also, Applicant proposes some changes to the conditions outlined by the order dated November 5, 2004, which Applicant will seek in a new order at the hearing on February 3, 2009. Specifically, Applicant requests the following:

- Revision to Condition 1 (approval period). Applicant seeks approval of the Application for a minimum period of ten years. If there is no objection, Applicant requests an indefinite extension on the approval term.
- Deletion of Condition 7 (installation of cable or chain). Given the hours of the Restaurant, the parking lot is needed for operation of the restaurant twenty-four hours a day. Thus, a chain to close the parking lot would not be utilized and is an unnecessary requirement.
- Deletion of Condition 9 (annual report by Applicant). The ANC liaison, as identified in my previous letter, can immediately address any concerns the ANC

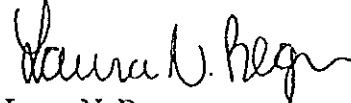
TROUTMAN
SANDERS

Ms. Susan Banta
January 12, 2009
Page 2

may have without the need of an annual report summarizing compliance with the conditions.

I look forward to hearing from you.

Very truly yours,



Laura N. Begun

LNB

cc: Brian Timmons (via e-mail)
Richard Pollak (via e-mail)
Arthur Jackson (via e-mail)

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