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VIA HAND DELIVERY

Zoning Board of Appeals, Rm. 315
City of Portland
389 Congress Street
Portland, ME 04101

***Re: Hardship Variance Application of Michael Keon
for Property at 184 State Street, Portland, Maine;
C/B/L: 45/C/1***

Dear Members of the Zoning Board of Appeals:

This office represents Michael Keon, prospective tenant under a proposed lease agreement for part of the property identified as 184 State Street owned by Geoffrey I. Rice (the "Property"). Please see the enclosed authorization letters signed by Mr. Rice and Mr. Keon authorizing me to pursue this appeal (Exhibits A and B enclosed herewith). On Mr. Keon's behalf, and with authorization from Mr. Rice, we are asking the Board to grant two (2) variances: one for parking required under Section 14-332(i) and one regarding a limitation on hours of operation under Section 162(a)(2)(h)(c). We respectfully request to have our application heard on the evening of May 5, 2016 at the Board's regularly scheduled meeting. Enclosed is our check in the amount of \$150.00 payable to the City of Portland as payment in full for the application fee and the processing fee.

We propose to convert a vacant storefront (formerly a frame shop) to restaurant use. Restaurants are permitted in the B1 zone, but with specific parking requirements and limits on their hours of operation that do not apply to the adjacent B3 zone. The Property is adjacent to B3 zoning directly across Pine Street and directly across State Street. There are three existing restaurants within just a few steps of the Property that are not subject to the parking requirement and the limited hours of operation: Pai Men Mayaki and LFK on State Street and Blackstones (which shares the building on the subject Property). Pai Men Mayaki and LFK are in the B3 zone; Blackstones is in B1, but grandfathered such that it needn't provide parking or limit its hours in accordance with B1 zoning.

The building on the subject Property occupies the entire parcel (see Exhibit D, Tax Map 45). There is simply no available area that could accommodate parking for the restaurant. We calculate that four (4) parking spaces are required for the 575 square foot public space within the restaurant. We have enclosed a Map of Parking Garages and Lots in Downtown Portland (Exhibit J) and the Annual Parking Survey of Downtown Garages and Lots for March, 2016 (Exhibit K). These provide graphic evidence of the availability of parking in the immediate vicinity of the subject Property and in the downtown area, generally. We believe that the grant of a variance that would eliminate the Zoning Ordinance's requirement for three parking spaces would be a *de minimis* reduction in the amount of available parking that would, for all intents and purposes, go unnoticed.

Also enclosed are internet webpages (Exhibit L) that show the advertised hours of operation for the three restaurants referenced above. The grant of the requested variance would "level the playing field" among these businesses and constitute what we think would be a *de minimis* relaxation of the limitation on hours of operation for a restaurant in the B1 zone.

Thank you for your consideration. We look forward to presenting our variance appeal to the Board on May 5.

Sincerely,



Jonathan E. Goldberg

Enclosures: Exhibits

- (A) Variance Appeal Application
- (B) Authorization letter signed by Michael Keon
- (C) Authorization letter signed by Geoffrey I. Rice
- (D) Tax Map 45
- (E) Aerial Photograph of the Property
- (F) Lot Coverage (Building Footprint) Map
- (G) Quitclaim with Covenant Deed
- (H) Portland Assessor's Card
- (I) Property Photographs (3 pages)
- (J) Parking Garage and Parking Lot Map
- (K) Annual Parking Survey of Downtown Garages and Lots, March, 2016
- (L) Internet Webpages for Nearby Restaurants

ZONING BOARD OF APPEALS
VARIANCE APPEAL APPLICATION

1. The land in question cannot yield a reasonable return unless a variance is granted.

Satisfied: X

NOT Satisfied: _____

Reason and supporting facts:

PARKING. The building situated on the subject property occupies virtually all of the land area—there is no land available for automobile parking. It is therefore impossible to satisfy the parking requirement in Section 14-332(i), which in this case would require the proposed restaurant to have a minimum of four (4) parking spaces available. Given the proximity of dozens of public parking garages and lots in downtown Portland that provide literally thousands of available parking spaces, the relaxation of the requirement for four (4) spaces seems de minimis. The rental space in question currently is vacant. In its present blighted condition it produces no return whatsoever for its owner. Without the grant of the variance requested, the space will not yield a reasonable return.

HOURS OF OPERATION. Section 14-162(2)(h)(c) limits restaurant hours of operation in the B-1 zone from 6:00 a.m. to 11:00 p.m. daily. In order to be able to compete with the three restaurants within a few steps of the subject property (Blackstones, LFK, and Pai Men Mayaki), all of which stay open past 11:00 p.m., we ask for a variance that will permit the proposed restaurant to operate until 1 a.m. Without the opportunity to compete on an even basis with its competitors, the proposed restaurant cannot justify a rental that will yield a reasonable return.

2. The need for a variance is due to the unique circumstances of the property and NOT to the general conditions of the neighborhood.

Satisfied: X

NOT Satisfied: _____

Reason and supporting facts:

The subject property is a mixed-use building comprised of residential apartments, a retail store and a restaurant/bar in addition to the vacant space for which the variances are sought. The uniqueness of the property is its location at the “end” of a B-1 zone and adjacent in two directions (across State Street and across Pine Street) to the more permissive B-3 zone. The B-3 zone carries no requirement for restaurant parking. Nor does it limit restaurant hours of operation to 11:00 p.m. But for its unique location in a B-1 zone cradled on two sides by a B-3 zone, no variance would be necessary. The general conditions of the neighborhood have no bearing on the need for requested variances.

3. The granting of the variance will not alter the essential character of the locality.

Satisfied: X

NOT Satisfied:

Reason and supporting facts:

The essential character of the neighborhood is a mix of homes and apartments, retail stores, churches, a funeral home, and restaurants. Rather than altering the essential character of the neighborhood, a grant of the requested variances will reinforce the essential character of the neighborhood in a positive fashion. The vacant space in question suffers the blemishes of graffiti and disrepair. Our proposal to create a first-class restaurant in that space will convert that space to an attractive, carefully maintained place of business that creates employment opportunities and an attractive dining choice to residents and visitors alike. The grant of the variances sought will not alter the essential character of the locality.

4. The hardship is not the result of action taken by the applicant or a prior owner.

Satisfied: X

NOT Satisfied:

Reason and supporting facts:

The hardship is due to the irregular juxtaposition of zones in the area. Those zones include R6, B1, B2b, and B3. Uses of properties that are adjacent to each other are governed by different zoning restrictions, resulting in inconsistent limits on permitted uses. The subject property predates Portland's Zoning Ordinance. No action by the applicant or a prior owner or tenant created or contributed to the hardship that we seek to abolish.

