

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

**Appeal Re: Square 2069, Lot 816
3426 Connecticut Avenue, NW**

PRELIMINARY STATEMENT OF APPEAL

I. Background:

McLean Bible Church ("**MBC**") appeals the letter decision issued by Matthew LeGrant, District of Columbia Zoning Administrator, dated October 15, 2007 (the "**Decision**"), regarding MBC's proposed accessory use of the Uptown Theatre, located at premises 3426 Connecticut Avenue, NW (Square 2069, Lot 816) (the "**Property**") (copy of Decision attached). The Property is authorized for use as "motion picture theatre with concessions" pursuant to Certificate of Occupancy No. B151646, issued November 3 1987.

MBC proposes a limited use of the Property for worship services, from approximately 6:00 am to 12:00 pm on Sundays only. The proposed time frame would allow MBC opportunity to set-up amplification and musical equipment needed for the services, conduct worship services (approximately 65 minutes duration) and remove said equipment. Certain brief orientation meetings regarding MBC and fellowship opportunities are also contemplated, all to occur within the time frame noted above. Aside from Sunday mornings, MBC will hold no other regular meetings at the Property.

The primary use and occupancy of the Property as a motion picture theatre is not impacted by MBC's proposed use. The Property is zoned CP/C-2-A and is located within the Cleveland Park Neighborhood Commercial Overlay. Theater use, including motion picture theater, is permitted pursuant to 11 DCMR §1302.2(x).

MBC appeals that portion of the Decision in which the Zoning Administrator concluded that the proposed use is not accessory to the theater use.

II. Jurisdiction:

Pursuant to D.C. Official Code §6-641.07(f) and 11 DCMR §3200.2, appeals to the Board of Zoning Adjustment may be taken by any person aggrieved, or organization authorized to represent that person, or by any officer or by any officer of department of the District or federal government, affected by any decision of an

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administrative officer granting or refusing a building permit or granting or withholding a certificate of occupancy or any other administrative decision based in whole or part upon any Zoning Regulations or Zoning Maps adopted pursuant to the Zoning Act.

III. Discussion:

The Zoning Administrator has erred in concluding that MBC's proposed use for Sunday worship service is not an accessory use to the principal theater use of the property. Accessory use in the Zoning Regulations is defined as follows:

Use, Accessory – a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use.

- 11 DCMR §199

Without doubt, the proposed church use of the Property will be located on the same lot as the existing theater use (Lot 816). Similarly clearly, the proposed church use will be subordinate to the principal theater use. The church use of the Property will be limited to not more than approximately six hours per week, on Sunday mornings. At all other times, the premises will be available for motion picture theater use. The church use of the property will be contingent upon the theater schedule and will in no way limit the scheduling of motion pictures by the theater, even if such scheduling limits or precludes church use at the times indicated. The Zoning Administrator, the Board of Zoning Adjustment and the D.C. Court of Appeals have all held that a use which occupied up to twenty percent of the space or time of a principal use was a subordinate accessory use. Please see Association for Preservation of 1700 Block of N Street, N.W. and Vicinity, et al., v District of Columbia Board of Zoning Adjustment, 384 A.2d 668 (D.C. 1978) ("Zoning Regulations express no intent to prohibit any and all subordinate or occasional uses, even if outside the scope of the principal use." "Zoning Administrator stated that even if the Metro YMCA private club derived as much as twenty percent of its income from nonmembers, he would consider that to be incidental usage." 384 A.2d at 673).

The church use will also utilize the existing layout and facilities of the theater. There will be no structural changes made to the theater building to accommodate the accessory church use. Ordinarily accessory uses do not carry any additional obligation to provide parking and loading under the Regulations for the amount necessary for the principal use. In any event, the Uptown Theater is a contributing building to the Cleveland Park Historic District, and no additional parking would be required for a change of use in the existing building.

The proposed church use is likewise accurately characterized today as "customarily incidental and subordinate" to the principal theater use. At the outset, it is important to note that uses which may not have been customarily incidental to other uses in 1958, when the current Zoning Regulations were enacted, or even twenty years ago, may well qualify as incidental uses today given advances in technology and related cultural shifts occurring over the last several years. One example is a principal use of a property as a grocery store. In years past, it is unlikely that one would consider uses such as banks, restaurants, coffee houses, pharmacies, or even gasoline service stations as customarily incidental to a grocery. Yet today, such uses are often considered the norm.

Such is the case with theater uses. Today, theaters do much more than solely serve their traditional principal uses of live theater, musical performance and motion picture projection. They also are utilized to host children's day care activities (summer programs), charity functions and galas, and community "town hall" meetings. Likewise, many theaters now contain restaurants and even bar areas.

Likewise, houses of worship no longer limit themselves to holding services in buildings that were built as and look like traditional churches, synagogues or other religious institutions. Congregations hold worship services in school auditoriums, storefronts, amphitheaters and parks. In what has become a trend throughout the nation, theaters are also being utilized to hold worship services. It is estimated that more than 250 such worship services are taking place in theaters every week. In metro-Washington alone, weekly worship services in churches are occurring in the Arlington, Bethesda, Gaithersburg, Manassas, as well as in the District of Columbia, where the National Community Church conducts weekly worship services in theaters located in Union Station and in Georgetown. We do not believe that the District has required a certificate of occupancy independent of the theater use for the latter two locations.

Such incidental use is logical and beneficial for both the principal and accessory users. The theater setting has been found to be very conducive for worship services and related church gatherings. At the same time, such accessory use during a time of the week when the theater would otherwise be dark and unoccupied (Sunday mornings) provides needed additional revenues for theater operators competing in a rapidly changing entertainment industry.

IV. Conclusion:

For all these reasons, McLean Bible Church believes that the letter decision issued by the Zoning Administrator is in error and should be reversed.