

D. Application for Special Exception and Variance Relief

The District of Columbia and the Washington Metropolitan Community Development Corporation ("WMCDC") (collectively, the "Applicant") the fee owners of Lots 801 and 805, respectively, known as 5127-5131 Nannie Helen Burroughs Avenue, N.E. (the "subject property"), hereby makes application to the District of Columbia Board of Zoning Adjustment (the "Board") for variances from: (1) the Floor Area Ratio requirements of § 771.2 of the District of Columbia Zoning Regulations, 11 DCMR Zoning (February 2003)(the "Zoning Regulations"), (2) the limitations on the enlargement of a nonconforming structure under Section 2100.3(b) and (3) a special exception from the parking requirements for a historic resource under Section 2120.6 in order to construct and develop a retail and commercial office project in the C-1 Zoning District.

1. Statement of Existing and Proposed Use

The Strand Theater, located on Lot 801 at the southwest corner of Division Avenue and Nannie Helen Burroughs Avenue, NE, is designated as a historic landmark on June 26, 2008 by the Historic Preservation Review Board ("HPRB") under the District of Columbia Historic Preservation Act, D.C. Law 2-144 (the "Preservation Act"). It is also listed on the National Register and is deemed one of the most endangered historic buildings in Washington, D.C. by the DC Preservation League and the Historic Preservation Office ("HPO"). The Strand Theater has a significant role in the development of the Deanwood neighborhood, a historically African-American community. It was the first motion picture theater east of the Anacostia River when it opened in 1928 and functioned as a center of community social life and entertainment. At various times the Strand Theater building supported neighborhood-oriented commercial uses, as a 1949 photograph shows a portion of the ground floor being used as the "Strand Pharmacy" with projecting storefront bay windows.

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CASE NO. 18109
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The current condition of the Strand Theater is one of severe deterioration and the building has been vacant and abandoned for many years. According to the HPO staff report, dated October 22, 2009, the Strand Theater was originally constructed in a restrained version of Renaissance Revival style, but the building has been stripped over time of its entrance canopy, fluted pilasters, original windows and doors and nearly all of the interior features and finishes. All that remains that distinguishes it in its historical role as a motion picture venue is the large rooftop sign, aligned on the western edge of the building and visible to pedestrians and motorists moving along Nannie Helen Burroughs Avenue, N.E. In addition to the two story theater space, the Strand Theater also contains a shallow mezzanine on the north side of the building (which functioned as the balcony seating area) and the partially excavated cellar also located on the north side of the building.

The Applicant sought concept review approval from HPRB for its plans to combine the Strand Theater with the adjacent structure on Lot 805 in an effort to restore the historic structure while making an adaptive re-use of the combined properties. The building on Lot 805 is contemporary with the Strand Theater, but is not landmarked. HPRB approved the concept plan for the project, but in doing so it established several design objectives for the project: (1) retain and refurbish the Strand rooftop sign, (2) reopen blocked-up window openings on the east and north facades of the Strand Theater with well-detailed storefront windows, (3) erect a shallow canopy over the main entrance on Nannie Helen Burroughs Avenue, NE, (4) add projecting commercial bay windows consistent with the 1949 appearance of the Strand Theater, (5) retain the historic theater space by limiting interior structural changes but permit limited interior demolition of the west wall of the Strand Theater to facilitate connection with the adjacent property, (6) harmonize any new construction on Lot 805 with the Strand Theater's exterior and (7) no additional exterior massing to the landmarked property.

The adjacent building on Lot 805 is a two-story commercial structure with a cellar that was contemporaneous with the Strand Theater. The building has suffered severe water damage over the years and the floors and stairs are too deteriorated to support weight. The Lot 805 building occupies only 39.3% of its lot with a ten-foot (10') side yard between it and the row of four (4) one-story commercial buildings to the west.

The Applicant has entered into a Disposition and Development Agreement with the District of Columbia, dated March 30, 2010, which will allow WMCDC to ground lease the Strand Theater and authorize the combination by subdivision of the Strand Theater with the adjacent building on Lot 805. The Applicant intends to construct a mixed use building (the "Project") which will contain: (1) a retail space by combining the ground floor of the Strand Theater with the ground floor of the adjacent building on Lot 805, (2) combined commercial office space on the mezzanine level of the Strand Theater and the second floor of the adjacent building on Lot 805, and (3) a community meeting space on the cellar level of the adjacent building on Lot 805.

2. Surrounding Area Description

The subject property is located within the eastern half of Deanwood neighborhood and located in the center of a C-1 commercial node running along Nannie Helen Burroughs Avenue NE from 51st Street NE to across Division Avenue, NE and for one block in both directions along Division Avenue NE. The commercial node is underdeveloped with many vacant commercially-zoned lots and under-utilized properties. The predominant land use to the north and west of the subject property is low-density (R-2) residential neighborhoods. Ballou High School is one block to the east. Marvin Gaye Park, which is undergoing infrastructure improvement with new walking trails and an amphitheater is just to the south of the subject property.

3. Development Characteristics of Proposed Use

When combined in the manner proposed by the Applicant, the project would have the following development characteristics:

	<u>Proposed</u>	<u>Allowed/Required</u>
Combined Lot Area	10,495.8 sq. ft.	n/a
Combined Gross Floor Area	15,258.35 sq. ft.	10,495.8 sq. ft.
Combined Floor Area Ratio	1.45	1.0
Combined Lot Occupancy	89.44%	100%
Parking Spaces	Three (3)	Seven (7)
Rear Yard	28.06'	20.0'
Height/Stories	32.0'/2	40.0'/3

4. Bases for Special Exception and Variance Relief

a. Special Exception Relief – Parking Requirements

The Applicant is requesting special exception relief under § 2120.6 to reduce the amount of required parking spaces for the subject property. The Strand Theater is a “historic resource” as a landmarked building and when combined with the building on Lot 805, as the Applicant proposes, the enlarged historic resource will trigger a parking requirement. Pursuant to § 2120.3, a historic resource is exempt from the parking requirements of § 2101.1, unless the additions to the historic resource increase the gross floor area of the historic resource by 50% or more (§ 2120.3 (a)) and the increased parking requirement resulting from the addition is at least four (4) spaces (§ 2120.3(b)). In this instance, the Strand Theater has an existing 7,005 square feet of gross floor area. With its plans, the Applicant will add a total of 8,258.35 square feet of gross floor area, which exceeds the 50% threshold, so that the Applicant is required to provide parking for the addition (assuming that

the parking requirement is at least four (4) parking spaces). The additional gross floor area being added breaks down to 3,486.3 square feet on the ground floor of the building on Lot 805 which will be devoted to retail use, and 4772.05 square feet on the second floor of the building on Lot 805 and the increased portion of the mezzanine within the Strand Theater which will be set aside for office use.

Applying the parking standards for retail and office use set forth in § 2101.1, the increased retail gross floor area will require two (2) parking spaces and the increased office gross floor area will require five (5) parking spaces for a total of seven (7) required parking spaces. The Applicant proposes to provide only three (3) parking spaces on the subject property.

The Board is empowered to grant relief from all or a part of the parking requirement attributable to the increased gross floor area if the Applicant can show that providing the required parking will compromise the architectural or structural integrity of the Strand Theater and meets the general special exception standard of § 3104. In this instance, the Strand Theater occupies 99.43% of Lot 801, so that there is no room on that lot to create parking spaces unless part of the Strand Theater is demolished to make room for parking spaces. Such extensive demolition is prohibited generally by the preservation requirements of the Preservation Act and the specific terms of the concept review approval by HPRB. Therefore, the only possible location for project parking is at the rear of the building on lot 805. Lot 805 is itself only 38.0 feet wide and the only means of access to parking spaces is through the public alley at the rear of the subject property. Given the narrowness of the lot and the applicable minimum width standards for parking spaces, the maximum number that the Applicant could create at the rear of the lot is four (4) parking spaces. In fact, because the rear of the property must also serve as the access point to the basement community meeting room, a portion of the width of the lot must be set aside to provide a walkway to the exterior

stairs. In addition, the Applicant believes strongly that at least one of the required parking spaces should be able to accommodate handicapped persons and must, accordingly, be wider than the standard parking space. Thus, the area at the rear of the lot can only accommodate three (3) parking spaces and the Applicant requests that the Board exercise its discretion under § 2120.6 to reduce the parking requirement from the seven (7) spaces otherwise required to three (3) spaces.

At the hearing, the Applicant will be prepared to address the criteria listed in § 2120.6 (a)-(d) as they apply in this instance.

b. Application of Facts to Variance Standards The nature of the variances requested --- the floor area ratio and the enlargement of a nonconforming structure --- are both area variances.¹ In pertinent part, § 3107.2 of the Zoning Regulations states that the Board has the power:

Where, by reason of . . . [an] exceptional situation or condition on a specific piece of property, the strict application of any regulation adopted under D.C. Code sections 5-413 to 5-432 would result in peculiar and exceptional practical difficulties to . . . the owner of the property, to authorize . . . a variance from the strict application so as to relieve the . . . hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. (emphasis added)

The test for an area variance then is threefold: (1) whether some condition of the subject property is exceptional or unique; (2) creating a practical difficulty under the Zoning Regulations; and (3) relief from which would not occasion substantial detriment to the public good or impair the intent, purpose, and integrity of the zone plan. Roumel v. D.C. Board of Zoning Adjustment, 417 A.2d 405, 408 (1980); Capitol Hill Restoration Society, Inc. v. D.C. Board of Zoning Adjustment,

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Ass'n for Preservation of 1700 Block of N Street v. D.C. Board of Zoning Adjustment, 384 A.2d 674, 676 (D.C. 1978).

398 A.2d 13, 15 (1979). It is clear that, like the circumstances of unusual shape or topography, "existing structures on the land are part of the property and may be exceptional conditions for variance purposes". Draude v. D.C. Board of Zoning Adjustment, 527 A.2d 1242, 1255 (D.C. App. 1987) citing Clerics of Saint Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2d 291, 293-94 (D.C. App. 1974). The manner in which the Applicant's circumstances and the circumstances of the subject property satisfy these three distinct elements for area variance relief are discussed below.

i. Exceptional Situation or Condition

The unique condition inherent in the subject property which necessitates the variance portion of this application derives designation of the Strand Theater as a historic landmark and the conditions attached to the conceptual review approval of the Applicant's plans for the subject property by the HPRB, which were previously enumerated. The Applicant is required to preserve and restore elements of the Strand Theater without adding to the massing of the structure and ensuring that the utilization of the adjacent structure will result in a project that is harmonious with the distinctive features of the Strand Theater. The Applicant's architect has concluded that this result can be achieved practically only by enlarging the Strand Theater by joining it to the adjacent structure.

As the District of Columbia Court of Appeals has said:

"Moreover, we have held that the need to expand an existing building may constitute the kind of exceptional condition of the property that justifies a variance."
Draude v. D.C. Board of Zoning Adjustment, 527 A.2d 1242, 1255 (1987).

Enlargement of a Nonconforming Structure (§ 2002.3(b))

The Strand Theater comprises a total of 7,005 square feet of gross floor area on a 5,902 lot, thus having a Floor Area Ratio of 1.19 in the C-1 Zone District in which 1.00 is the FAR maximum. In this respect the Strand Theater is a nonconforming structure. As such, under § 2001.3 an

enlargement of the structure can be made only if the structure meets lot occupancy limits and the addition or enlargement neither increases nor extends any existing nonconformity or creates a new nonconformity. In the instant application, the Strand Theater is nonconforming with respect to FAR and that particular nonconformity will increase with the Applicant's proposed plans.

Floor Area Ratio (§ 771.2)

The Floor Area Ratio in the C-1 Zoning District cannot exceed 1.0 (§ 771.2). The Applicant's site plan situated on 10,495.8 square feet of land has a Floor Area Ratio of 1.45. The difference between the allowed and the measured floor area ratio is, therefore, 0.45, or 4,762.55 square feet. In the view of the Applicant, this difference can be accounted for entirely with the observation that in order to meet the preservation objectives of the HPRB, the building core to serve the combined buildings (stairs, elevator, mechanical room, handicapped-accessible restrooms) must be located outside of the Strand theater itself and accommodated within the building on Lot 805.² In addition, the HPRB has mandated that the exterior development of the building on Lot 805 should be compatible with the principal design elements of the Strand Theater. To accomplish this, the architect has extended the concept of the projecting storefront windows to the adjacent building to balance the north facade of the combined structures. Since the building core functions are located here, the building on lot 805 must serve as the principal means of entry to the second floor offices uses and still function as part of the retail ground floor. The existing building on Lot 805 is too narrow to serve these purposes and it became imperative to widen the building by eliminating the side yard to the west and to extend the building to the south. Such an expansion allows the new

²While theoretically the building core could have been located within the Strand Theater using the structural framework of that building, the most likely location for the building core in that instance would have been the west wall of the Strand Theater which works against the joiner of the two buildings at the ground floor level.

structure on Lot 805 to satisfy the three different needs for the combined building: building core, usable retail space and main office entry.

ii. Practical Difficulty

In order to comply with the Zoning Regulations, the Applicant would have no practical way to utilize the Strand Theater for retail/office development consistent with the preservation objectives of HPRB. The only solution to the problem is to combine the two adjacent properties and to utilize the enlarged structure on lot 805 for the building core functions serving the Strand Theater.

WMCDC is a nonprofit corporation formed by Holy Christian Missionary Baptist Church For All People in 2006 and has been actively engaged in working with concerned community stakeholders to further the goals of revitalization in the Deanwood neighborhood. WMCDC has, as part of planning process for the Strand Theater redevelopment, entered into a community benefits agreement with the Lincoln Heights/Richardson Dwellings New Communities Development Committee (including representatives of ANC-7A, the Deanwood Civic Association and resident leaders from Lincoln Heights, Richardson Dwellings and other Deanwood community leaders. As a public service organization, the Applicant, is not, like other applicants before the Board, required to make a showing that no other economic use can be made of the proposed site. Draude, 527 A.2d, at 1256. There is a line of decisions confirming that the Board should apply a more flexible standard for determining hardship and difficulty when a “public service” or nonprofit entity is the applicant. Monaco v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1091 (D.C. 1979); National Black Child Development Institute, Inc. v. District of Columbia Board of Zoning Adjustment, 483 AS.2d 687, 690 (D.C. 1984).

iii. Compatibility with the Zoning Scheme

The final prerequisite for variance relief is to demonstrate that the requested relief can be

granted without adverse impact on the intent, purpose and integrity of the zone plan. The Project is a low density, neighborhood oriented, mixed-use retail/office development consistent with the character and purposes of the C-1 Zoning District. The Project also fits within the framework of Chapter 17 of the Revised Comprehensive Plan for the National Capital, 10 DCMR Comprehensive Plan Part 1 (October 2007) (the “Plan”) which identifies the intersection of Nannie Helen Burroughs Avenue, NE and Division Avenue NE community commercial hubs which are in great need of infill and revitalization.³ Deanwood, as a whole, is characterized by the Plan as being “underserved [*sic*] by retail stores and services, including the ‘basics’ such as sit-down restaurants, banks, hardware stores, drug stores and movie theaters.”⁴ The proposed project on the subject property directly responds to these objectives and goals for the Deanwood area and the immediate intersection. In addition, the Plan expressly identifies the Strand Theater as a historic resource to be protected and restored

To implement the program to revitalize neighborhoods, the Office of the Deputy Mayor for Planning and Economic Development has developed and published Deanwood/Great Streets - Nannie Helen Burroughs Avenue NE and Minnesota Avenue NE Strategic Development Plan as a part of the Neighborhood Investment Fund established by the City and the D.C. Council (“NIF/Deanwood”).⁵ This particular effort was a collaboration of the City with community stakeholders to define local priorities. The Applicant was an active participant in the development

³See Policy FNS-2.2 Deanwood and FNS-2.2.2: Nannie Helen Burroughs at pp. 17-17 and 17-18 of the Plan.

⁴See Chapter 17: Far Northeast and Southeast, at p. 17-8 of the Plan.

⁵Neighborhood Investment Fund *Deanwood Investment Plan*, D.C. Office of Planning, February 2008.

of NIF/Deanwood. Among the several priorities identified by the Deanwood stakeholders, one of the very first was to redevelop abandoned commercial frontages at commercial nodes along major corridors with the ultimate goal of affording convenient access to community retail and services for the Deanwood community.

In summary, the Applicant believes that the Project as a low density, neighborhood-serving mixed use retail/office development clearly and materially advances the goals of the Zoning Regulations and the Plan and furthers the objectives of NIF/Deanwood.

E. Community Contacts

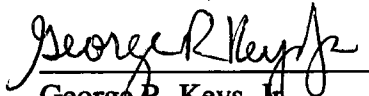
The Applicant has acted to ensure that the local community is informed of the Project through its participation in Deanwood community planning activities and the execution of the community benefits agreements for the Strand Theater project. The Applicant and its development team representatives will meet with Advisory Neighborhood Commissions 7C at its regular monthly meeting in June 2010.

F. Conclusion

Based upon the foregoing discussion, the Applicant requests that the Board grant a special exception under Section 2120.6 to reduce the parking requirements for a historic resource and two area variances under Section 2100.3(b) to permit the enlargement of a nonconforming structure and under Section 771.2 to increase the allowable Floor Area Ratio, all in the C-1 Zoning District.

Respectfully submitted,

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