

Testimony for BZA Application No. 18471

My home which is adjacent to the applicant's property in the same R-5-B zone, a residential zone, will continue to be subject to unwanted and unwarranted impacts of commercialization if this variance gets granted without substantial limitations and conditions, and equally importantly, without a clear means of enforceability of these limitations and conditions.

I am the owner and resident of 1603 S Street, an end-row house on the north side of the 1600 block of S Street NW, just around the corner from the church which fronts on 16th Street NW. The end-row wall of my home abuts the 10 foot wide alley separating my property from the rear of the church property, and it is this 10 foot wide alley which provides access to the service door located in the rear of the church. The service door is used to provide access to the church basement for repairmen and others needing access to the mechanical systems of the church as well as for the part-time church maintenance staff which are at the church maybe 2 mornings a week. It is this same rear service door which for a year and a half doubled during the day and late into the evenings as the main and only public and staff entrance to the basement theater space and its offices.

The theater began operating in this space in late 2010. Since that time I have experienced repeated disturbances of a commercial nature which are not allowed by right or by special exception in a residential zone. These disturbances include but are not limited to heavy foot traffic coming and going to performances, auditions, rehearsals, dinner galas, fashion shows, and other non-performance uses ... including even the filming of a commercial ... If the sign on the back service door one weekday saying 'commercial being filmed in here' was to be believed. I also observed the space being advertised without restriction on its use on the Internet .. with the theater company effectively subletting the space to any and all sublessors. '\$40 an hour or \$1,200 for the week'! Other disturbances and commercialization of the space and the neighborhood included the setting up of tables in the shared alley with sales of T-shirts and other performance-specific paraphernalia ... effectively blocking the alley for its intended and legal uses ... This occurred notably during one especially heavy period when the Capital Fringe festival was conducting approximately 4 performances a day for 6 days a week, extending for a 5 to 6 week period one summer.

Additionally, using the back service door as an entrance for the theater resulted in not only the foot traffic and noise disturbances already noted, but in the almost constant presence of people 'hanging out' in our shared alley. Performers and guests and people building sets, congregated before and after auditions and practices, before and after and during performances, and just about any other time you could think of to smoke and to chat ... and to do what people do when they are at work or when they are at a theater performance ... or when they are at a venue where a commercial is being filmed or a fashion show being set up. I found myself increasingly refraining from working — or even being — in my front and back yards ... because there were always people gathered just a few feet away. One such person once leaned over my fence as I was planting flowers and in dirt up to my ankles, to ask me 'Isn't it strange living so close to a theater? Do you like living here?' Other people stood and stared into my kitchen and dining room windows while I went about my daily life, and they went about their smoking and chatting and pondering the 'great urbanism of this theater venue'. My front garden began sprouting weeds and cigarette butts and soda cans instead of the flowers my neighbors always used to thank me for planting and caring for ... before the theater came.

These disturbances coming from the theater were not limited to any specific day of the week (or even any specific night or nights of the week) ... and they extended almost without interruption throughout the year ... For a full year and a half .

Since I first met Mr. Henrich outside in the alley in late 2010 and he told me of his plans to turn the church's basement into a theater space and the church's back basement door into a separate entrance for the theater, I have objected to this on the grounds that this is my home and I am entitled to the peace, order and quiet which the zoning rules for a 5-R-B zone are designed to protect and promote. And I have objected on the grounds that I have made a very substantial monetary commitment, i.e. a 'big mortgage' to be a part of this community and to live where I live, and it's not fair to see my financial interests and commitment harmed by the commercialization of a property so close to mine ... a property which is zoned the same as mine and which I expected to function as a church ... with use on Sundays and maybe some meetings during the week or a wedding here and then, but definitely not to the level I've been experiencing, nor the times of the day and night I've witnessed, since the theater moved in.

I understand the need of the church to generate income flows to support the maintenance of a church building which is aging just at the same time that its congregation is dwindling. And I understand it needs to do so in a way which won't interfere with its own mission and its own needs in regards to use of the space within the church ... including the basement. And I understand it is attempting to find secondary uses for the church property, the church's only real asset ... other than its

congregants and limited savings, which can synergistically use the space at times the church isn't otherwise using it. But I ask that the church agree to and the Board of Zoning Variance put in writing what was told to me by the then minister of the church when I first approached her back in late 2010 after my first learning of Mr. Henrich's plans for the church basement. The Reverend Lilly said to me 'Lance don't worry. We're only talking a few shows a year with very few performances each. Three shows a week, a week at a time, maybe three or four times a year. And the number of people attending won't be anywhere close to the 200 person occupancy of the space. We've been told it'll maybe be 25 or 40 at the very most. That's what we've been promised. You won't even know they're here, and if you do get bothered by it, we'll stop it. We don't want to be bad neighbors. Our relationship with the neighbors is of the utmost importance to us.' ... Shortly after that promise was made to me, the Reverend was let go from the church. The longtime church administrator had also been let go shortly before the reverend. And when I approached a church board member to discuss the escalating use of the space some 6 months later, I was told 'Deal with Richard Henrich, this is between you and him. The church just rents the space'. And that I tried for the next year and more. And it didn't help.

So while I understand the needs of the church for the income from this use, I ask that such variance, if granted, guarantee that this theater use not be commercial in nature, and really be for a very very limited number of performances and for a very very limited number of patrons. And I ask that the back service door be used only as a back service door and not as a theater entrance with all that has entailed for me living so close to that door.

Specifically, I ask that conditional to the granting of a variance that the church, and any tenant theater company, or other organization using the space abide by the conditions specified by the ANC especially with regards to prohibiting all non-service, non-handicapped access use of the back service door; and that the church's own self-imposed limitations as stated in its application asking for a maximum of '48 performances a year', and a cap of 75 patrons at each performance be made part and parcel of any approved variance. And, equally importantly, I am asking that these conditions and limitations be formalized in such a way that they are legally enforceable at the bequest of the neighbors individually or severally. I don't want to have to depend on promises made by people or an organization who may or may not still be around when a problem resurfaces, or who's institutional memory may have been clouded by time. I believed the Reverend Lilly when she told me she'd be sure to keep it small, because I trusted her. But things happen. I don't want the enforcement of a variance granted here today to be subject to people or organizations. It must be fully enforceable under the law and at the bequest of those most specifically affected. If that cannot be done, then this variance should not be granted.

I am not addressing other commercial uses for the space which the church or the theater may be contemplating, and which have occurred over the last 2 years with increasing frequency since the space was renovated,... but neither is the variance application. The variance application before us is simply for theater use ... and not for non-church uses which would otherwise require variances of their own ... including events where the church benefits either directly from the 'rental' of the space or benefits indirectly by sharing in the proceeds of an event in lieu of rent. These other non-church uses, such as auctions, dinner galas, etc. are not permitted under the zoning law as far as I know, and this variance, a variance for theater use will not do nothing to change that.

However, in the case of theater performances, which are the scope of the requested variance, I do not want 'ticket sales' to be made a condition of determining what is covered by the variance and what isn't. A large crowd is still a large crowd irrespective of whether they've purchased tickets or benefited some other organization by contributing to that other organization in another manner ... such as an auction ... or being a sponsor of it ... or whatever. Making ticket sales the criteria upon which 'commercialization or not' is judged, is just inviting creative thinking on how to characterize a theater performance which isn't the church's ... and which is commercial in nature irrespective of how the funds are collected, and which other than this variance, would not otherwise be allowed. We must be sure we are really looking at no more than 48 performances a year, and no more than 75 participants at any one performance.

In closing, my immediate concerns with the theater being located in this commercial space have been addressed over the past several months by a temporary variance which very effectively placed the same conditions and limitations on the use of the space that I am now asking be placed in a permanent manner if a variance is granted. While I can now raise my head from the trenches, and from my garden, after some very hard years, the greater concerns of the neighborhood must still be addressed. I don't want what I had to experience close up passed on to others simply because they've never experienced first-hand what a commercial presence in a residential neighborhood can do to the peace, order and quiet and daily lives of those affected. If the theater is to be successful, it will entail having audiences of greater than the 5 to 20 individuals which the application by the church estimates as attending the Spooky Actions performances today. It could entail numbers more akin to the number of people I saw involved in the subletting situations out the back door such as the Capital Fringe Festival. And that's different than what most of the other neighbors not immediately adjacent to the church have experienced yet on a regular basis.

Any theater use permitted on this site must be 'limited in size and infrequent in number' as the Reverend Lilly had promised me.

The theater use must be incidental to the church use of this property (a permitted use) and not be in lieu of it. The theater must be there to benefit the church and not vice versa. And I am counting on the Board to permit this use only if the Board can do so with certainty that these conditions and limitations can and will be enforced in practice as well as in promise. I don't want any more promises that aren't kept.

By granting this variance, you may very well be setting a precedent for other churches that want to raise capital by renting out their basements to unrelated groups. Please ensure the precedent you are considering setting comes with limits and a means of enforcement.

Thank you.

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