

April 9, 2013

District of Columbia Board of Zoning Adjustment
441 4th Street NW
Office of Zoning, Suite 210
Washington, DC 20001

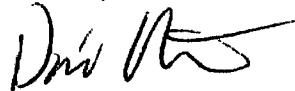
**Re: BZA Application No. 18547: 2020 Shannon Place, SE (Square 5772, Lot 984) ~
Pre-Hearing Statement in Support**

Dear Chairperson Jordan and Members of the Board

On behalf of the D C Theater Arts Collaborative, the applicant along with Curtis Investment Group (the owner of the property) in the above-referenced application, enclosed please find the Applicant's pre-hearing statement in support of the request for variance relief from the parking requirements of the Zoning Regulations, which will permit the establishment of a theater in the Anacostia neighborhood

Please feel free to contact me at (202) 721-1137 with any questions regarding this application

Sincerely,



David Avitabile

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO 18547
EXHIBIT NO 24

CERTIFICATE OF SERVICE

On April 9, 2013, I caused a copy of the foregoing letter and enclosure to be delivered by hand or electronic mail to the following:

Maxine Brown-Roberts
D C. Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024

Advisory Neighborhood Commission 8A
P O. Box 73878
2100-D Martin Luther King Jr Avenue, SE
Washington, DC 20020

A handwritten signature in black ink, appearing to read 'David Avitabile', is written over a horizontal line.

David Avitabile

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

Application of D C Theater Arts Collaborative
on behalf of Curtis Investment Group

BZA Application No 18547
Hearing Date: April 23, 2013
ANC 8A06

PRE-HEARING STATEMENT OF THE APPLICANT

This is an application from the DC Theater Arts Collaborative (“Applicant”) on behalf of Curtis Investment Group (“Owner”) for variance relief from the parking requirements of the D C Zoning Regulations. The relief is required to accommodate the conversion of a portion of an existing warehouse into a proposed theater at 2020 Shannon Place, SE (Square 5772, Lot 984)¹ (“Property”). The Property is in the C-M-1 Zone District.

I. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations

II. PROPERTY DESCRIPTION

The Property is located on Shannon Place SE and is bounded by a public alley to the south and east. The Property is bounded by a public alley to the south and east. The Property is one block off the Martin Luther King, Jr , Avenue, SE corridor and the Anacostia Metrorail Station is approximately ½ mile to the southwest. Multiple Metrobus routes provide regular service along Martin Luther King, Jr. Avenue corridor. Furthermore, the Potomac Avenue

¹ The property that is the subject of this application only includes the southern portion of Lot 984

Metro-Skyland D.C. Circulator route provides a direct connection to the Eastern Market Metrorail station and Capitol Hill via the 11th Street Bridge and Barracks Row.

The Property is currently improved with a warehouse structure that occupies 100% of the underlying lot (the “Building”). The Building was constructed prior to the 1958 Zoning Regulations and has been used for a variety of retail, service, commercial and industrial uses since its construction. Because the Building occupies 100% of the underlying lot, the Property does not provide any on-site parking.

The Property is located in the C-M-1 Zone District. Property to the north, west and south is also located in the C-M-1 Zone District. Property to the east is located in the C-3-A Zone District.

III. THE PROPOSED PROJECT

As shown on the plans attached to the initial application, the Applicant proposes to renovate the southern portion of the existing Building known as 2020 Shannon Place, SE into a new home for the arts in the Anacostia neighborhood, the Anacostia Playhouse (“Playhouse”). The Playhouse is being developed by the founders of the H Street Playhouse, which has drawn new visitors to the H Street corridor for over a decade and helped spark the commercial and residential renewal of the area.

The Applicant now seeks to replicate its success by relocating the H Street Playhouse to the Anacostia neighborhood, which currently has limited access to arts presentations, performances, exhibits and instruction. The existing Building will be converted into a live theater space that will produce performances as well as provide space to other companies. The Anacostia Playhouse, which will be the first performing arts venue in Anacostia, will provide

community outreach and accessibility benefits to low- and moderate-income members of the Anacostia community, including programming available at low cost so that affordability is not a barrier to public participation in the arts. Other building features may, over time, include exhibit space and rehearsal space to individual artists and arts organizations, after-school programs that focus on the performing arts, and other collaborations with arts organizations.

The Applicant's proposed conversion of the southern portion of the Building from its existing office / warehouse use to theater use triggers a requirement for additional parking spaces under Section 2100.4. The proposed theater will provide up to 150 seats, which triggers a requirement for 15 parking spaces, less any parking credits attributable to the previous use. However, because the Building occupies 100% of the Property, the Applicant is unable to provide such parking. Therefore, the Applicant seeks variance relief from the parking requirements of the Zoning Regulations.

IV. REQUEST FOR EXPEDITED HEARING

The Applicant appreciates the Board's consideration of this matter on an expedited schedule. The Applicant began construction of the Playhouse in Fall 2012 but ceased work after DCRA determined that variance relief from the parking requirements was required, even though the Property was constructed prior to 1958 and had changed uses multiple times since the adoption of the 1958 Zoning Regulations without any requirement for additional parking. The delay severely threatened the viability of the Playhouse, because it required the Applicant to delay scheduled productions and start paying rent on the Building before the theater was in operation.

Ultimately, the Applicant worked with Chairperson Mendelson of the D.C. Council and DCRA officials to authorize the issuance of a building permit to allow interior work not related to the change in use to take place, provided that approval of the variance relief is in place by the time the Applicant seeks approval for any permits or a certificate of occupancy related to the theater use. The District issued the building permit on March 29, 2013; in a first-of-its-kind moment, Mayor Gray came to DCRA to sign off on the permit himself:



Interior work is now under way. The Applicant requests the Board's careful consideration of this matter to allow the work to continue without further delay.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D C Bd. of Zoning Adj., 287 A 2d 535, 541 (D C. 1972). As outlined below, the Applicant shall demonstrate that the Property meets the three-part test for area variance relief

A. The Property is Affected by an Exceptional Situation or Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A 2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that “. . . property generally includes the permanent structures existing on the land [footnote omitted].” Id. at 293-94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (i e. the building or structure) and not just the land itself Furthermore, the Court of Appeals held in Gilmartin v D.C. Board of Zoning Adjustment, 579 A 2d 1164, 1167 (D C 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors ” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood

The Property meets the “exceptional conditions” element of the variance test. The existing Building occupies 100% of the underlying Property which, when combined with the

relatively small size and shape of the lot, imposes unique and exceptional constraints on any adaptive reuse of the Building. The existing lot contains no room for surface parking, and the small size and narrow shape of the lot combined with the existing improvements make it infeasible, if not impossible, to construct parking below the existing Building. The expense associated with such construction constitutes a practical difficulty, as discussed below.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty”² In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case ” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards ” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd of Zoning Adj., 579 A.2d 1164, 1167 (D.C 1990)) Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ . Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D C. 1976)), see also Tyler v D.C. Bd of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the

² By contrast, the test of a use variance is “undue hardship,” which is a more stringent standard than required for area variances

effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A 2d at 1171

Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. Here, the Applicant meets this standard. The Property’s exceptional conditions result in a practical difficulty in complying with the parking requirements. As noted above, the Building occupies 100% of the underlying lot, which makes it impossible to construct surface parking. Furthermore, the location and size of the existing Building makes it economically infeasible to construct parking underneath the existing structure, such construction would require extensive structural efforts as well as demolition of portions of the existing structure to create the parking entrance and ramp. Even if it were feasible to construct parking underneath the existing Building, the lot would be too small or narrow to support a reasonable parking layout. Most of the underground space would end up devoted to ramps and drive aisles rather than actual parking spaces.

C. Relief Can Be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Variance from the parking requirements can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. As noted above, granting of the variance permits the Applicant to adaptively reuse the Property as a much-needed arts use in a neighborhood that lacks such amenities. The Playhouse will promote greater interest in the arts within the neighborhood as well as draw visitors to the neighborhood, which supports ongoing community and business development efforts.

Furthermore, the minor variance relief does not result in any significant adverse impacts to the adjacent properties above that which is permitted as a matter of right. The proposed use

would only require 15 parking spaces, but such spaces are not necessary given the proximity of the Property to ample public transportation alternatives, which include Metrorail, multiple Metrobus lines, and the D.C. Circulator. Furthermore, the Applicant has received permission to use 15 surface parking spaces located immediately behind the Property across the public alley to accommodate parking demand. These parking spaces are accessed from the public alley and will provide convenient parking for patrons who choose to drive to the Playhouse

Based on the foregoing, ANC 8A voted to support the proposed request for variance relief. Therefore, for all the reasons stated above, the Building will create positive benefits to the public good, and relief from the parking requirements is appropriate in this case.

VI. WITNESSES

At the public hearing, the Applicant and its architect will be available to provide testimony and evidence related to the proposed request.

VII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the variance relief sought in this case

Respectfully submitted,

/s/

David Avitabile

Date. April 9, 2013