GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16551

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 9 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, or delivered via inter-agency mail to each party and government agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Dora D. Hunter
5552 B Street, S.E.
Washington, DC 20019

Welch Family Limited Partnership
1422 K Street, N.W., Suite 652
Washington, DC 20005

Lisa A. Greene and Robert Pittman
Linden Place Neighborhood Association
P.O. Box 1767
Washington, DC 20002

Ivette Basterrechea, Chairperson
Advisory Neighborhood Commission 6A
624 H Street, N.E., Ground Floor
Washington, DC 20002

Wanda C. Stevens-Harris, Commissioner
Single Member District 6A09
1127 7th Street, N.E.
Washington, DC 20002

Councilmember Sharon Ambrose
Ward 6
441 4th Street, N.W., Room 710
Washington, DC 20010

Michael Johnson, Zoning Administrator
Building & Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 200
Washington, DC 20009

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director

BZA
Case No. 16551
Exhibit No. 45

Board of Zoning Adjustment
District of Columbia
CASE NO.16551
EXHIBIT NO.45

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16551 of The Welch Family Limited Partnership #10/Steve Royall, pursuant to 11 DCMR § 3103.2, for a variance under 11 DCMR § 2101 from the off-street parking requirement for a "Social Lounge and Dance Place (Public Hall)" in a C-2-A District at premises 1335 H Street, N.E. (Square 1027, Lot 824).

HEARING DATES: February 16 and April 5, 2000
DECISION DATES: April 5 and May 3, 2000

DECISION AND ORDER

PROCEDURAL MATTERS:

The Applicant was properly represented before the Board. Steve Royall, the owner and proprietor of the subject property, gave permission to Dora Hunter, the owner of the proposed business, to represent him. The authorization, a Certified Resident Agent Appointment Form, was signed by both Steve Royall and Dora Hunter and was notarized.

The Board received a letter from Marvin Fields, Chairperson, Zoning & License Committee of Advisory Neighborhood Commission (ANC) 6A. The letter stated that the Applicant attended ANC meetings on January 12, 2000 and February 3, 2000, and that the Zoning & License Committee voted to refer the matter to the full ANC. Two ANC commissioners testified at the Board's February 16, 2000 public hearing; however, the Board did not receive the final recommendation of ANC 6A prior to the close of the record.

The Linden Place Neighborhood Association requested party status (Exhibit No. 21). The Board approved the request. The Linden Place Neighborhood Association opposed the application on several grounds, including that a public hall would disrupt the peace, quiet and order of the surrounding neighborhoods; parking overflow from the proposed facility would make it more difficult for residents to find on-street parking; the facility's late night operating hours would produce activities that would be disruptive to the neighborhood; and trash generated by patrons of the proposed public hall would be discarded on neighborhood streets.

The Board also received testimony from neighborhood residents and Ward 6 Councilmember Sharon Ambrose in opposition to the application. The opponents cited general concerns about traffic, parking, safety, noise, and disorderly crowds.

FINDINGS OF FACT:

1. The site is located in the Northeast quadrant of the District of Columbia in Square 1027, Lot 824, at 1335 H Street, N.E.

2. The site abuts a 15-foot wide public alley on the west. The property is narrow and long; its width is 21 feet and its depth is 175 feet. The property has a total land area of approximately 3,680 square feet.

3. A two-story, brick building occupies all of the property. At the time of the public hearing, a restaurant/nightclub, with 150 seats and a liquor license, occupied the second floor. The proposed public hall would occupy the building's first floor. The Applicant indicated an intent to apply for a liquor license within 90 days of the public hall's opening.

4. The Applicant proposed to open a social lounge, called Dee's Diamond In The Rough, with seating for at most 75 people and providing live entertainment such as jazz, rock bands, and stand-up comedians from a small portable platform stage. Hours of operation would be 9 p.m. to 1 a.m. on Tuesday and Wednesday, 9 p.m. to 2 a.m. on Thursday, 9 p.m. to 3 a.m. on Friday and Saturday, and closed Sunday and Monday. The facility would not be leased to outside groups. Sobriety nights, when no alcoholic beverages would be sold, would be held one night per week. The minimum age for patrons would be 25, with the exception of sobriety nights, which would be open to persons ages 18 and older.

5. The neighborhood surrounding the site is predominantly residential, including the buildings to the immediate south (rear) and west of the subject site. Some of the buildings that front on H Street, N.E. in the vicinity of the site contain a mix of uses: commercial businesses on the first floor, with residential use on the upper floors. At the time of the public hearings, the first floor of the subject building was unoccupied and available for lease; the second floor of the building was in use as a restaurant/nightclub. The Applicant indicated that the building's first floor previously housed a shoe store.

6. The site is located in a C-2-A District, where a public hall is permitted as a matter of right. 11 DCMR § 721.6(a). However, the Zoning Administrator, by letter dated November 3, 1999, directed the Applicant to seek zoning relief from the parking requirements for the site because the on-site parking requirement cannot be provided at the subject property. (Exhibit No. 8)

7. A public hall must provide one off-street parking space for each 10 seats of occupancy capacity for the first 10,000 seats. Where the seats are not fixed, each seven square feet usable for seating is considered one seat. 11 DCMR § 2101.1.

8. The proposed public hall is required to provide 20 off-street parking spaces, based on the floor plan submitted with the application and testimony by the Applicant at the public hearing. The number of required parking spaces was calculated using a formula that

included fixed and non-fixed seats. However, because the subject building occupies 100 percent of the lot area, no on-site parking can be provided.

9. The Applicant testified that it had an agreement with the owner of a nearby business property, Mason Hair Gallery at 1010 H Street, N.E., for the use of seven parking spaces at the business, three blocks from the public hall, between 8 p.m. and 3 a.m.

CONCLUSIONS OF LAW AND OPINION:

The Board is authorized to grant a variance from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. . . ." D.C. Code § 5-424(g)(3), 11 DCMR § 3103.2. Relief can be granted only "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. *Id.*

Variance of the off-street parking regulation cannot be strictly categorized as either a use variance or an area variance, but is a hybrid with aspects of both. *Palmer v. Board of Zoning Adjustment for the District of Columbia*, 287 A.2d 535, 541 (D.C. 1971). Viewing the difference between "practical difficulties" and "undue hardship" as a matter of degree, the D.C. Court of Appeals has construed the statute in the disjunctive, applying the "practical difficulties" criterion to area variances and the "undue hardship" criterion to use variances, which warrant a more stringent showing in light of the more drastic relief inherent in a use variance. *Id.* A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. *Id.* Thus, in the Palmer case, the Court applied both the practical difficulty and undue hardship tests to a requested variance from the off-street parking requirements for a public hall use.

In the case presently before the Board, the Applicant does not own the property but seeks to use its first floor for a public hall. The Applicant did not demonstrate that the property could not be put to any reasonable use consistent with the Zoning Regulations. Rather, the Applicant demonstrated only her plans for a business at the premises. However, the impact of the Zoning Regulations on a lessee is irrelevant. *Palmer*, 287 A.2d 535 at 542. There is no evidence in the record that the owner of the property cannot lease the space to a tenant for a use in conformance with the Zoning Regulations, including the off-street parking regulations. Accordingly, the Board concludes that the record fails to support a finding of "hardship upon the owner."

With respect to area variances, the owner of the property must show that compliance with the area restriction would be unnecessarily burdensome. A variance cannot be granted where property conforming to the regulations will produce a reasonable income. *Id.* at 542. The record contains no evidence that compliance with the Zoning Regulations, including the off-street parking requirements, would be unnecessarily burdensome to the owner of the property at issue. The C-2-A zone is designed to provide facilities for shopping and business needs, housing, and

mixed uses for large segments of the city outside the central core. 11 DCMR § 720.1. Numerous uses are permitted as a matter of right in C-2 zones, in addition to those uses permitted with Board approval. *See* 11 DCMR §§ 721, 724, 725-734. Although the first floor of the subject property is currently vacant, it was formerly leased to a shoe store. The second floor is presently used as a restaurant. The Applicant failed to demonstrate that strict application of the Zoning Regulations, restricting use of the property to some purpose that is not required to provide on-site parking, would cause any practical difficulties or undue hardship to the owner of the property.

The Board is not persuaded by the Applicant's efforts to obtain off-site parking to serve the proposed public hall. The location identified by the Applicant, a business located three blocks from the subject site, can accommodate only seven cars. The Applicant did not submit a signed lease agreement with the nearby business indicating that patrons of the public hall could in fact park there at designated times. Moreover, the Application seeks only a variance from parking requirements and did not request a special exception in order to provide accessory parking elsewhere. See 11 DCMR § 2116.

The Board is unable to give great weight to the issues and concerns of ANC 6A. The ANC submitted two reports to the Board, but neither indicated that the application was discussed at a public meeting with a quorum of commissioners present. The Board notes that the Applicant attended two publicly advertised ANC meetings and provided information about the project to members of the ANC and to residents of the community.

The Board finds that the Applicant has failed to prove, by a preponderance of evidence, that a variance from the parking requirements for the proposed public hall can be granted consistent with applicable legal requirements. The Board hereby **ORDERS** that the application be **DENIED.**

Motion made April 5, 2000, to approve the application. The motion failed for lack of a concurring vote of the full majority of the members of the Board (that is, at least three concurring votes), and the application was therefore denied. *See* 11 DCMR § 3125.2.

VOTE: 2 – 1 – 2 (Sheila Cross Reid and Robert N. Sockwell, to approve; Carol J. Mitten, to deny; and Anne M. Renshaw and Rodney L. Moulden, not present, not voting).

Board member's reconsideration motion made May 3, 2000, to approve the application. The motion to approve the application failed for lack of a concurring vote of the full majority of the members of the Board, and the application was therefore denied. *See* 11 DCMR § 3125.2.

VOTE: 2 – 3 – 0 (Sheila Cross Reid and Rodney L. Moulden, to approve; Robert N. Sockwell, Anne M. Renshaw, and Carol J. Mitten, to deny).

Motion made May 3, 2000, to disapprove the application. While this motion was technically not required under the Board's Rules of Practice and Procedure and the rules of parliamentary procedure, the Board wished to clarify that the application was denied.

VOTE: 3 – 2 – 0 (Carol J. Mitten, Anne M. Renshaw, and Robert N. Sockwell, to deny; Sheila Cross Reid and Rodney L. Moulden, to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: MAR 2 9 2001

PURSUANT TO 11 § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

MN/BAB

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16551

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 9 2001 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, or delivered via inter-agency mail to each party and government agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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