GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: January 8, 2002

SUBJECT: BZA Application 16785 - Supplement

APPLICATION
Francis J. Bundu, President of the African Community Center, Inc., originally requested a 100% variance from a parking requirement under Section 2101, pursuant to Section 3104.1 under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning, to allow the establishment of a "public hall" use in an existing second floor meeting room on property located at 39 New York Avenue, N.E.

SUMMARY RECOMMENDATION
The Office of Planning recommends deferring a final decision so the applicant may continue negotiations for lease agreements or contracts that will guarantee access to off-street parking for weekend users of the public hall. In the alternative, OP recommends denial.

ADDITIONAL INFORMATION
During the public hearing on November 13, 2001, staff raised a number of concerns about this request:

- **The lack of handicapped parking and drop-off areas:** No parking spaces near the entrance are designated for handicapped-accessible vehicles parking or for dropping-off persons who need assistance.
- **The distance from the available parking spaces:** The only access to the second floor is from the New York Avenue, N.E. frontage. The distance from this entrance to the eastern and western ends of the square are approximately 370 feet and 342 feet, respectively. This is quite a distance to walk *in addition* to the distance from a car parked along First Street, N.E., behind the building along N Street, N.E. or another block away on P Street, N.E.
- **The potential to encourage illegal parking:** This walking distance may encourage illegally parking or stopping along New York Avenue, N.E., creating a dangerous situation.
- **No apparent pass-through access to N Street, N.E. parking:** There appears to be adequate parking available along N Street, N.E., to meet the use requirements. The two parking lots to the east and west of the property could allow pedestrians to pass through the square from New York

BZA Case No. 16785 Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16785
EXHIBIT NO.35

Avenue, N.E. However, these are gated parking facilities without pedestrian pathways. Visual evidence indicates that the gates are not generally open on weekends, so this pass-though option would not be available for event participants.

- **Other activities along N Street, N.E.:** The methadone treatment program continues through the weekend.

The Board of Zoning Adjustment (BZA) questioned whether the applicant could request zoning relief since they do not own the subject property. Advisory Neighborhood Commission (ANC) 6A recommended denial based largely on a lack of communication from the applicant. The Department of Public Works and Metropolitan Police Department issued letters recommending denial of this application generally due to concerns about increased parking congestion on nearby neighborhood streets, the distance from the proposed public hall to on-street parking spaces, and the lack of handicapped accessible facilities (refer to Exhibits 1 and 2). The Fire Department recommended approval with a condition that the converted office space meet all Building Code requirements for a place of public assembly, and that a new Certificate of Occupancy be issued for the requested use (Exhibit 3). Note that the applicant indicated that no more than 45 persons would occupy the hall.

Since the public hearing:

- The property owner sent a letter dated December 4, 2001 to the BZA formally requesting zoning relief in the form of a parking variance for the African Community Center (Exhibit 4). They state that granting the parking variance "would relie(ve) (them) of the lack of a renter and revenue to the said building."
- The President of the Skylark Lounge at 33 New York Avenue wrote a letter dated December 10, 2001 (Exhibit 5) outlining an agreement with the African Community Center to use the parking lot next to their building from 5:00 P.M. on Fridays to midnight on Sunday. According to this letter, the Center now has keys to the gates along New York Avenue and N Street, N.E. driveways (allowing the potential for more immediate access to N Street N.E. parking spaces).
- The applicant presented their proposal to the ANC 6A Zoning & Land Use subcommittee stating that not more than 45 persons would be attending center activities, and that attendees would have access to fifteen parking spaces in the Skylark Lounge parking lot. Based on this presentation, the subcommittee recommended approval of this proposal by the full ANC.
- The regular ANC meeting scheduled for January 3, 2002 was not held due to a scheduling conflict. As a result, the applicant's proposal was not presented for formal approval.

FURTHER ANALYSIS

During a site visit, staff counted seven stripped parking spaces in the Skylark Lounge parking lot, approximately four parking spaces in front of the lounge in public space, and four spaces in public space in front of the subject property, for a total of sixteen parking spaces (Exhibit 6). Bobby Bell, President of Skylark Lounge, indicated that he agreed to *share* the available parking on Friday and Saturday nights. On Sundays, the lounge is closed and all the associated parking spaces are available. Securing the gate keys also allows Center attendees more direct access to the parking along N Street N.E.

The applicant has stated that the public hall would host not more than 45 persons at a time. The Zoning Regulations parking requirement for public halls, however, is based on the number of seats or total floor area, and not the number of occupants. Installing fixed seating for 45 persons would reduce the parking requirement from 72 to five on-site parking spaces (based on the 1 space per 10 seats requirement under Section 2101.1).

The Zoning Regulations also allows required on-site parking spaces to be located on property other than where the building (use) is located:

"2116.6 Except as provided in §2117.9, if approved by the Board of Zoning Adjustment, open parking spaces accessory to any building or structure may be located anywhere on the lot upon which the building or structure is located, or elsewhere, except in the case of a one (1) family dwelling, in accordance with §§2116.6 through 2116.9.

2116.7 The Board shall determine that it is not practical to locate the spaces in accordance with §2116.2 for the following reasons:
(a) Unusual topography, grades, shape, size, or dimensions of the lot;
(b) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets;
(c) Traffic hazards caused by unusual street grades; or
(d) The location of required parking spaces elsewhere on the same lot or on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties.

2116.8 When the accessory parking spaces are to be located elsewhere than on the lot upon which the building or structure they are intended to serve is located, the parking on adjacent lots or lots separated only by an alley from the lot upon which the building or structure is located, shall be preferred.

2116.9 The accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures which they are designed to serve.

2116.10 The Board may impose conditions on any accessory or non-accessory parking spaces as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it shall deem necessary to protect adjacent or nearby property. It may also impose the other conditions as it shall deem necessary to assure the continued provision and maintenance of the spaces."

Therefore, required parking spaces could be located on other lots subject to Special Exception approval. Based on this information, staff recommended that the applicant:

- Revise their proposal to including installation of permanent seating for 45 persons (consistent with their earlier presentations).

- Negotiate with the lounge to reserve five parking spaces for use by the Center during the prescribed hours of operation.
- Designate one of the reserved parking spaces for handicapped parking.

The subject application could then be converted from a request for a variance to a request for a Special Exception to allow required parking spaces to be located at 33 New York Avenue (or elsewhere) instead of the subject property. It appears that the referenced modifications would meet the referenced standards under subsections 2116.7-2116.9. If so, staff could support approval subject to conditions reflecting the above recommendations, and limiting the term of the Special Exception to three years.

To date, the applicant has not responded to this proposal.

RECOMMENDATION

The applicant is applauded for securing shared access parking next to the Skylark Lounge, the potential to provide more direct access on-street parking along N Street N.E., and securing a positive ANC recommendation. The Office of Planning, however, continues to share concerns expressed by the Department of Public Works and Metropolitan Police Department. More effort is needed to secure definite off-street parking options. On this basis, OP again recommends deferring a final decision so the applicant may continue negotiations for a lease agreement or contract that will guarantee access for weekend users of the public hall to parking at 33 New York Avenue, S.E., the gated lot west of the New York Car Wash, and to other locations. In the alternative, staff recommends denial.

Attachment: Exhibit 1 Letter from Kenneth G. Laden, Associate Director of Transportation Planning, Department of Public Works to Jerrily R. Kress, Director, Office of Zoning, dated November 9, 2001
Exhibit 2 Letter from Alan J. Dreher, Acting Commander to Senior Executive Office, Metropolitan Police Department, First District dated November 1, 2001
Exhibit 3 Letter from Bruce Cowan, Fire Marshall to Andrew Altman, Director, Office of Planning dated December 6, 2001
Exhibit 4 Letter to D.C. Board of Zoning Adjustment from Jerry H. Shuff, Managing Partner, dated December 4, 2001
Exhibit 5 Letter from Bobby Bell, President, 1943 New York Avenue, to D.C. Board of Zoning Adjustment dated December 10, 2001
Exhibit 6 Property Aerial Showing Zoning

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Exhibit 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT DIVISION OF TRANSPORTATION

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Transportation Policy and Planning Administration

MEMORANDUM

TO: Jerrily R. Kress, FAIA
Director
Office of Zoning

FROM: Kenneth G. Laden Rich Rybeck for Ken Laden
Associate Director for Transportation Planning
Transportation Policy and Planning Administration

DATE: November 9, 2001

SUBJECT: BZA Application No. 16785 – Variance from Parking Requirements for a Proposed Public Hall Located at 39 New York Avenue, NE; Lot 18, Square 671

The Department of Public Works, District Division of Transportation (DDOT) has reviewed the subject application and material for the above site. This memorandum addresses the transportation aspects of the proposal.

The applicant proposes to convert an existing office space into a public meeting hall. The site is located in a C-3-C district. The site frontage is located on New York Avenue, NE, and the rear of the property abuts N Street, NE. This block of New York Avenue has no parking and no standing restrictions enforced all day. The total square footage of hall space to be used is 5,000 sq. ft. The off-street parking requirement is to provide one parking space for each 10 seats of occupancy. The applicant did not state the proposed capacity of the hall therefore each seven square feet ($7ft^2$) of usable space shall constitute one seat. The applicant is required to provide 72 parking spaces. The applicant stated that no parking spaces would be provided at the site for patrons of the hall.

The applicant stated that there are over 200 public parking spaces in the immediate area. The public parking lots in the area are located off N Street at the rear of the property. The applicant did not mention in the application of any agreement with the owners of the above mentioned parking lots to provide parking for the hall during the proposed hours of business, 8 PM to12 AM, Friday to Sunday. The parking lots are located to the rear of the site and there is no mid-block pedestrian access from N Street to New York Avenue. The proposed use of the parking lot locations would require patrons to walk to the end of the block to access New York Avenue, thus deeming the site inaccessible to handicap patrons who drive their own vehicles. Accordingly, DDOT does not support the application.

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Exhibit 2

METROPOLITAN POLICE DEPARTMENT
Central Regional Operations Command
First District

November 1, 2001

MEMORANDUM:

TO: Senior Executive Director
Office of Organizational Development

SUBJECT: BZA Application Number 16785 (Public Hall 39 New York Ave. N.E.)

The establishment of a public hall at 39 New York Avenue N. E. may present several problems for the First District. The Northeast corridor of New York Avenue, in the unit block, is largely commercial office space and businesses. This area has been in decline for the past two decades. For the first time in more than twenty years it is starting to see a vast improvement, with new construction.

On the Northwest side of North Capitol Street it is entirely residential. Sursum Corda and Sibley Plaza public housing projects are directly across the street from the unit block of Florida Avenue Northeast, just South of New York Avenue. There are also town homes on New York Avenue, North Capitol Street, Hanover Place, N Street, O Street and P Street.

The presence of a public hall would crowd already congested parking in the surrounding residential neighborhoods. As parking swells, safety will be an issue, both for the patrons and the residents. Both New York Avenue and North Capitol Street are major thoroughfares. With the crowds that a public hall would draw, noise complaints and other quality of life issues that would be a detriment to the progress already seen in the area. A public hall would compromise economic development in an area that shows much promise in the near future.

Alan J. Dreher
Acting Commander

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT
WASHINGTON, D.C. 20001

Exhibit 3

MEMORANDUM

TO: Andrew Altman
Director
Office of Planning

FROM: Bruce Cowan BC
Fire Marshal

DATE: December 6, 2001

SUBJECT: BZA Application No. 16785 - Application by the African Community Center, Inc. for a Variance From the Parking Requirements to Allow Establishment of a Public Hall at 39 New York Avenue, N.W.

The D.C. Fire and EMS Department has reviewed the above BZA Application and submit the following comments.

During an on site inspection of the facility, it was apparent by the number of chairs and the size of the meeting space, this space was more than likely being used by more than 45 occupants as stated in the application. There were other concerns such as the lack of fire alarm equipment and adequate exits from this space. The space had one legal exit stair. There was a stair on the other side of the building, however, you had to exit through unfinished space, instead of a fire rated corridor with proper exit lighting. Other minor fire code violations were also observed.

I recommend this application be approved with the condition it meet all of the Building Code requirements for a place of public assembly and obtain a new certificate of occupancy for the new use group.

If you have any questions concerning this review, please contact Acting Captain William Guffey of my staff. He may be reached at 727-1614.

FROM :

PHONE NO. :

Exhibit 4

December 4, 2001

D.C. BOARD OF ZONING ADJUSTMENT
441 FOURTH STREET, N.W.
SUITE 210 – S.
WASHINGTON, D.C. 20001.

RE: 39 NEW YORK AVENUE, N.E. VARIANCE.

This letter is being forwarded to the Zoning Board Adjustment of the District of Columbia as a result of the hearing of November 13, 2001, requesting the hardship and relief request of this Zoning Board Adjustment (hereafter "Board") from us as the property owner.

We have in the past hard problems regarding interested renters unwilling to submit application for parking variance relief because of lack of cooperation from the government. As a result our building remained vacant for several years with a loss of income while taxes are paid.

Mr. Bundu and the African Community Center. Inc is the only company willing to gamble in an attempt to obtain occupancy certificate for their intentional use which according to knowledge and belief is not against the law. In addition, the usage is for good cause to benefit the African Communities as a whole. Thus by the granting of the parking variance would relief us of lack of renter and revenue to the said building.

Hence, we are respectfully requesting this Honorable Board to grant our application for parking variance as a result of the hardship described above.

Very truly yours,

[redacted] – Managing Partner.

Exhibit 5



December 10, 2001

DC Board of Zoning Adjustment
Suite 210-S
441 4th. Street N.W.
Washington DC. 2001

RE: Parking Variance Application of the
33 New York Ave, LLC

This is to certify that our company and African Community Center, Inc. of 39 New York Ave. N.E. entered into a mutual agreement whereby the said will utilize our parkings only on the weekends from 5.00p.m Fridays through 12.00 a.m. Mondays. Our company do not conduct business during that period.

It is mutually understood that African Community Center will use said parkings for the purposes of their meeting to promote cultural events. As a result of the said understanding a separate key has been issued to Mr. Franceis Bundu, the president of the company.

Should your office need additional information please do not hesitate to contact me at 202-832-7490

Sincerely,

Bobby Bell
President

CC: Francis Bundu
African Community Center, Inc.

Jerry H. Shuff
Managing Partner
33 New York Ave, LLC.

December 4, 2001

D.C. BOARD OF ZONING ADJUSTMENT
441 FOURTH STREET, N.W.
SUITE 210 – S.
WASHINGTON, D.C. 20001.

RE: 39 NEW YORK AVENUE, N.E. VARIANCE.

This letter is being forwarded to the Zoning Board Adjustment of the District of Columbia as a result of the hearing of November 13, 2001, requesting the hardship and relief request of this Zoning Board Adjustment (hereafter "Board") from us as the properly owner.

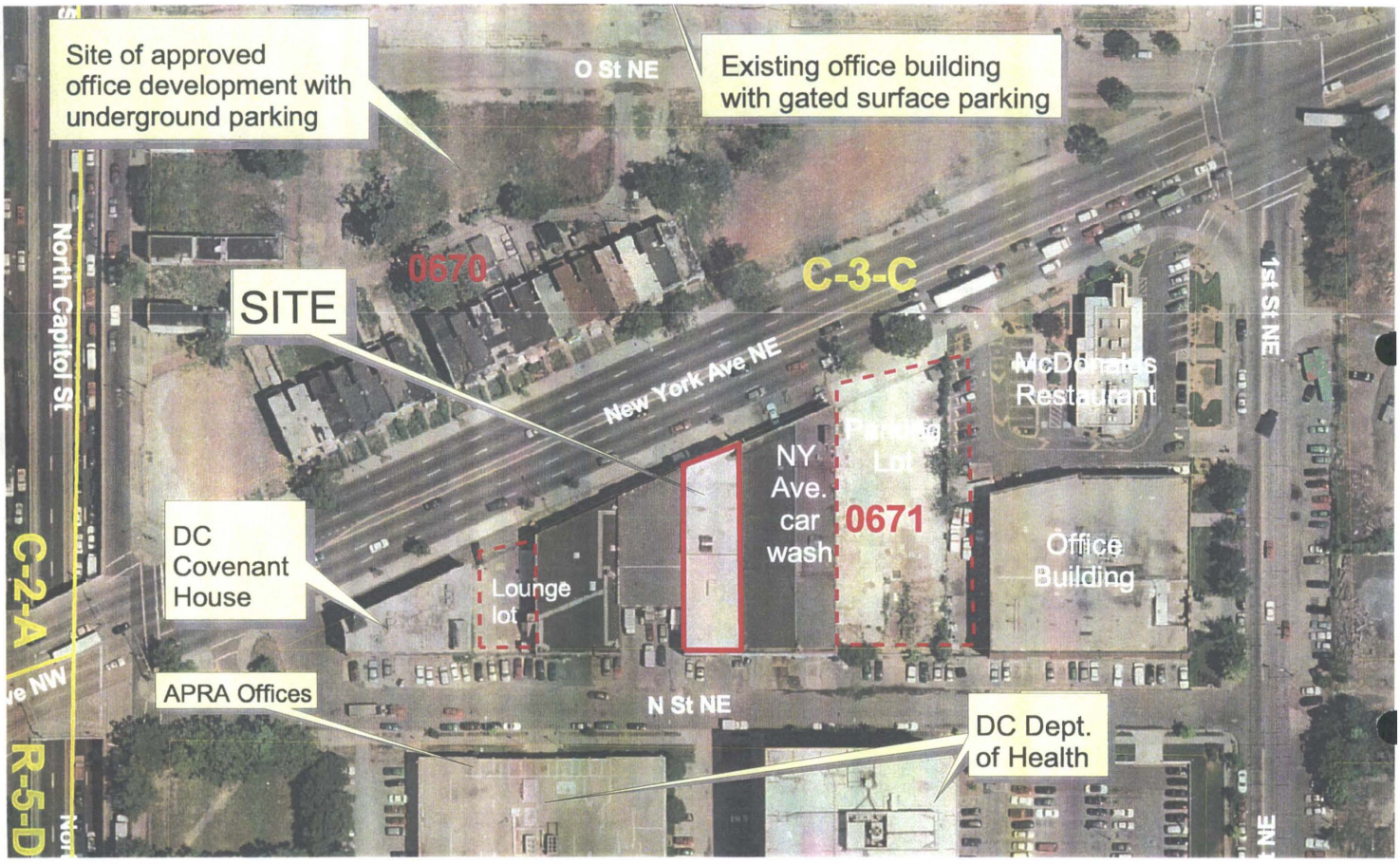
We have in the past hard problems regarding interested renters unwilling to submit application for parking variance relief because of lack of cooperation from the government. As a result our building remained vacant for several years with a loss of income while taxes are paid.

Mr. Bundu and the African Community Center, Inc. is the only company willing to gamble in an attempt to obtain occupancy certificate for their intentional use which according to knowledge and belief is not against the law. In addition, the usage is for good cause to benefit the African Communities as a whole. Thus by the granting of the parking variance would relief us of lack of renter and revenue to the said building.

Hence, we are respectfully requesting this Honorable Board to grant our application for parking variance as a result of the hardship described above.

Very truly yours,

Jerry H. Shull – Managing Partner.



Property Maps and data maintained by:
Government of the District of Columbia
Office of Tax and Revenue
941 North Capitol Street, NE
Washington, D.C. 20002

BZA Application No. 16785
93 New York Avenue, N.E.

100 0 100 Feet

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Prepared on: October 31, 2001

Exhibit 6