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October 23, 2001

VIA HAND DELIVERY

Members of the Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001
Attention: Richard S. Nero, Jr.

Re: BZA Case No. 16796

Dear Board Members:

On behalf of the Applicant Marc Barnes, please find enclosed an original and 10 copies of the Statement of the Applicant in connection with the above-referenced application for variance relief. Eleven sets of architectural drawings are included as an exhibit to same.

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 419-2559.

Sincerely,

Lisa L. Jackson

cc: Marc Barnes
William Dorsey
Norman M. Glasgow, Jr.
Steven E. Sher

WAS1 #1024560 v1

BZA
Case No. 16796
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.16796
EXHIBIT NO.23

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Marc Barnes

BZA Application No. 16796
Hearing Date: November 6, 2001
ANC: 5B

STATEMENT OF THE APPLICANT

I.

NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Marc Barnes (the "Applicant") in support of the above-referenced application for a variance from the requirement of Title 11, Section 2101.1 of the District of Columbia Municipal Regulations (the "Regulations"). The request is being made in order to allow the Applicant to construct a public hall/restaurant on Parcel 142/103, Square 4038 located at 1350 Okie Street, N.E in the C-M-2 District. The proposed public hall/restaurant has the unanimous support of Advisory Neighborhood Commission ("ANC") 5B, the Ward Councilmember and Mayor Anthony Williams. The Applicant is not aware of any opposition to the application.

II.

JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the variance requested herein pursuant to Sections 3103.2 of the Zoning Regulations.

III.
BACKGROUND

A. Description of the Subject Property

The subject property is a 12,330 square foot lot located on the north side of Okie Street, N.E. in Square 4038 in Ward 5. The property is improved with an approximately 36,000 square foot, three story with a small fourth level, former film processing warehouse with a basement. The building on the site occupies nearly 100% of the site, with the exception of an approximately 10 foot rear setback area. To the best of the Applicant's knowledge, the building sat vacant for approximately 5 years prior to the Applicant's purchase of the Property in May, 2001. The property is zoned C-M-2 and is designated in the Production and Technical Employment category on the District of Columbia Generalized Land Use Map of the Comprehensive Plan. (*See* Exhibits A, B, C, and D.)

B. Description of Surrounding Area

Square 4083 is bounded by New York Avenue, and Fenwick, Okie and Kendall Streets in the Eckington Yards neighborhood of the Northeast section of the City. From New York Avenue, the square is easily accessed by either the controlled intersection at Kendall Street or the controlled intersection at Fenwick Street. The Property is located amongst a mix of industrial, commercial and public facilities. The Property is bordered on the west by a storage yard for District of Columbia Public School buses; on the northeast by the District of Columbia Community Corrections Center; along the length of the eastern edge of the property by a 16 foot

public alley; and on the south by Okie Street. A public alley abuts the property for 20 feet on the northwest corner of the Property. A truck repair shop is located directly across the east side of the 16 foot public alley.

Scattered throughout the surrounding blocks are a number of vehicle repair and maintenance shops, storage yards, small scale commercial uses and abandoned buildings. The Crummel School and parking lot is located directly across Okie Street to the south. A parking lot controlled by the District of Columbia Public Schools is located on Square 4041 across Kendall Street to the west of Square 4083. Another parking lot is located on the southwest corner of the intersection of New York and Fairview Avenues for which the Applicant is in negotiations for a lease agreement which will provide approximately 120 spaces. Approximately 75 spaces of public street parking also is located in front of the Property and along both sides of Okie Street between Fenwick and Kendall Streets. An additional 50 public on-street spaces are located on both Fenwick and Kendall Streets between Okie Street and New York Avenue. Both Okie Street and the block between Fenwick and Kendall are well lit at night. (*See* Exhibit E.)

C. Zoning History

As will be discussed further herein, in 1994, in BZA Application No. 15875, the Board denied an application of a previous applicant for a special exception and variance from the off-street parking requirements of § 2101.1 of the Regulations. With regard to the variance, the Board found that the Applicant had demonstrated a practical difficulty arising from an exceptional condition of the property in that

the lot is occupied almost entirely by the subject structure and no parking can be provided on the site. Although recognizing the need and validity for off-site parking, the Board at that time was not satisfied with the efforts the then-Applicant proposed to take to provide for the safety of patrons if a variance from the off-street parking requirement had been provided. (*See* Exhibit F.) Another application for a variance from the parking requirements of § 2101.1 of the Regulations was filed in BZA Application No. 16400 in July, 1998. Although a hearing was held in that case, no order was issued.

D. Description of the Proposal and Requested Variances and Special Exception

The Applicant seeks to undertake a multimillion dollar renovation of the abandoned warehouse and convert it into an upscale, high quality public hall—i.e. a dance and social club—and restaurant. While maintaining yet enhancing the brick exterior façade of the club with architectural embellishments, the Applicant plans to transform the interior into an elegant, full-service social destination designed to serve a sophisticated and diverse clientele. Accessed through the grand, open marble and wood paneled foyer from Okie Street, the first level will include approximately 12,000 square feet of space and will serve as an open lobby/lounge with of approximately 7,900 square feet. The main/lobby level will also include a seating area, bar, concierge desk, coatroom, and bathroom facilities. The second level will include an approximately 5,530 square foot dance area, three bar areas, a 24 inch raised wood stage, two VIP rooms, and bathroom facilities. The third level will consist of another 3,000 square foot dance floor, bathroom facilities and bar,

and an approximately 3,000 square foot rooftop deck on the western half of the building. The roof will include a VIP roof deck on the eastern half of the building over looking the third floor roof deck below. The roof will also include a large office area and dressing/living area for visiting talent. The basement will include a 24-burner kitchen designed to serve patrons of the public hall as well as to accommodate accessory catering services that the club will provide. (*See* Exhibit G)

Consistent with the successful pattern established at the other successful club operated by the Applicant, the Republic Gardens on U Street in the Shaw neighborhood, the Applicant proposes a mix of musical styles to attract a diverse crowd to the site. The club hours of operation will be in accordance with its ABC license approvals on Thursday through Sunday nights.

Section 2101.1 of the Regulations requires a public hall in the C-M-2 District to provide one parking space for each 10 seats of occupancy capacity for the first 10,000 seats, plus one for each 20 seats above the first 10,000; provided that where such seats are not fixed, each seven square feet usable for seating shall be considered one seat. The Applicant proposes a combination of both fixed and non-fixed seating for each floor with a total capacity for use by 2,300 patrons.

As mentioned herein, the building in which the public hall/restaurant will be located was built in approximately 1939 as a film processing warehouse and as such, was not required to provide any parking spaces. Since the building occupies almost 100 percent of the site, there is no room to provide the parking on-site.

Thus, the Applicant must seek a variance from the provisions of § 2101.1 of the Regulations.

V.

THE APPLICANT MEETS THE BURDEN OF PROOF FOR A VARIANCE FROM THE PARKING REQUIREMENTS OF THE REGULATIONS

A. Standards for Granting a Variance

Under D. C. Code Section 5-424(g)(3) and 11 DCMR 3103.2, the Board is authorized to grant variances from the strict application of the regulations where it finds three conditions exist:

(1) the property is unique because, *inter alia*, of its size, shape or topography or other extraordinary or exceptional situation or condition;

(2) the owner would encounter practical difficulties or undue hardship if the Zoning Regulations were strictly applied; and

(3) the variance would not cause substantial detriment to the public good and may be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. *See French v. District of Columbia Board of Zoning Adjusment,* 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment,* 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment,* 534 A.2d 939 (D.C. 1987).

In the case of an area variance, the Applicant must show that the uniqueness or exceptional situation or condition of the property imposes a practical difficulty on

the Applicant's ability to comply with the regulations and such variance will not substantially impair the intent and purpose of the regulations and Map. In the subject case, the requested variance from the parking requirement meets the requirements for the approval of a variance.

B. Variance relief under Section 2101.1 (Parking Requirements)

1. <u>The Property is Affected by an Extraordinary or Exceptional Situation or Condition.</u>

The subject property is affected by an extraordinary situation or condition in that, at the time it was built in approximately 1939, the Zoning Regulations did not require commercial or industrial lots to provide parking on-site for any permitted use within such zone districts. (*See* Exhibit H) As such, the property was built to almost 100% lot occupancy and it is now physically impossible for the Applicant to provide parking on-site, no matter what the use or how many spaces are required under such use.

In an earlier case involving the same Property in which the Applicant sought a variance from the required parking, the Board found that the Property suffered from an exceptional situation or condition because of its inability to provide parking on-site due to the building's near 100% occupancy of the lot. The Board's Order in BZA Application No. 15875, on page 10, states:

> The Board concludes that the applicant has demonstrated a practical difficulty arising from an ***exceptional condition of the property*** in that the lot is occupied almost entirely by the subject structure and no parking can be provided on the site. **[emphasis added]**

In *Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment*, 320 A.2d, 291, the Court found that the presence of an existing building on a site could impose a unique and exceptional situation or condition on Property. The Applicant submits that the building on the Property constitutes an exceptional situation or condition in that the building occupies nearly 100% of the lot given its construction prior to the establishment of parking requirements properties within the C-M-2 District, and does not have a large parking area like many of the other properties in the Square.

In addition, the Board has previously found in a prior application that the same Property is unique due to the exceptional condition of its near 100% occupancy of the lot. The Applicant would argue that since the same set of facts surrounding the lot are applicable in this case, the Board as a quasi-judicial body is bound by the principles of *res judicata* to again conclude that the Property is affected by an exceptional situation or condition. Under the principle of *res judicata*, a matter decided or passed upon by a court of competent jurisdiction is received as evidence of truth. (*See, e.g.* Smith v. District of Columbia Board of Zoning Adjustment, App. D.C., 342 A.2d 356 (1975) (in which the Court found that while the Board is not bound for all time by its prior positions, it should consider any long-standing interpretations of zoning regulations which it has approved in the past.)).

2. **Strict Application of the Zoning Regulations would impose a practical difficulty on the Applicant.**

Strict application of the Zoning Regulations would impose a practical difficulty on the Applicant as he would be unable to establish the public

hall/restaurant use he seeks for the Property unless a variance is granted because parking cannot physically be accommodated on-site. As with the "exceptional situation or condition" prong of the three prong variance test, the Board has previously found that Applicant's seeking variances from the parking requirements of § 2101.1 of the Regulations would suffer a practical difficulty if the requested variance is not granted and should again do so in this case.

3. **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.**

Relief can be granted without substantial detriment to the public good and without substantially impairing the purpose and integrity and of the zoning regulations and map. As indicated herein, the Applicant is required under §2101.1 to provide 230 spaces. Although the Applicant cannot provide those spaces on-site, the Applicant will lease spaces in nearby parking lots. The Applicant will provide approximately 120 spaces in a lot the Applicant will lease on Fairview Avenue, approximately 1 ½ blocks from the site. (*See* Exhibit I.) An additional 78 spaces will be provided pursuant to a lease with the owner of the Property at the intersection of Kendall Street and New York Avenue, approximately ½ block from the site (*See* Exhibit J). An additional approximately 75 street parking spaces are available on Okie Street, and another approximately 50 spaces are available in the 1300 block of Fenwick and Kendall Streets.

As he does with his other public hall/restaurant, the Republic Gardens at 14th and U Streets, N.W., the Applicant will provide a valet parking option to and from

the site. In addition, to ensure safety and security of the club patrons, the Applicant will hire a number of uniformed officers from the Special Operations Division of the Metropolitan Police Department to patrol the areas between the Property and the parking lots.

As mentioned herein, in the previous case in which a variance from the parking requirement of § 2101.1 was sought for this site, the Board's denial of the variance was based on finding that the Applicant had not provided sufficient evidence that measures would be taken to ensure the safety of patrons at the site. There was significant opposition to the previous case by both the ANC and the Councilmember for Ward 5 based on the failure of the previous Applicants to make a commitment to instill the residents with enough confidence that sufficient safety measures would be taken and that sufficient parking would be provided for the club so as not to adversely impact surrounding warehouse and residential property owners. Contrary to the circumstances in the previous case, the Applicant in this case has worked closely with the ANC and surrounding property owners to outline the security measures and parking plan that will be put in place to effectively address those issues and has the support of the ANC. The Applicant also has obtained letters of support from Councilmember Vincent Orange and Mayor Anthony Williams (*See* Exhibit K). In addition, the Metropolitan Police Department has likewise presented no objection to the application.

The Applicant's use of the property as a public hall/restaurant upon issuance of a variance from the requirements of § 2101 also will advance specific objectives of

the District of Columbia Comprehensive Plan for the Ward 5 area. Specifically, the proposed use will be consistent with the following Plan objectives:

Section 1600.2 of the Plan provides:

> Ward residents envision a future where the ward's stable neighborhoods are protected and enhanced; where new public and private investment will improve the quality of life in poorer neighborhoods.

Section 1601.1(f) of the Plan provides that the City should:

> (a) Promote economic development projects in the Eckington Yards and Ivy City industrial and commercial tracts;
>
> (h) Encourage and increase the number of minority-owned and small businesses within the ward and assist existing businesses.

Given the City's articulated goal of stimulating private development in Ward 5, and in particular, in the Eckington Yards area, and the goal of encouraging minority-owned businesses, the Applicant's proposal establishes a ripe opportunity to infuse the area with a quality development that will enhance the stature of the community and could help serve as a catalyst for future development in the area. The Applicant is renowned throughout the Metropolitan area and the United States as a first-class club and restaurant owner/operator and business promoter. The Applicant intends to replicate at Okie Street his experience with the Republic Gardens. That club opened in 1995 at the nascent stage of the revitalization of U Street and has served as a catalyst for other quality development in the Shaw neighborhood. The Applicant is committed not only to ensuring the success of his own business entity, but in order to promote the surrounding area, will make other investments in the community around Okie Street. For example, the Applicant

seeks to purchase an abandoned building on Okie Street with the hope of turning it into a police substation. The Applicant also has made a commitment to provide assistance to the local elementary school and provide assistance to allow neighborhood children to attend summer camps.

The Applicant submits that with implementation of the parking and security plans as conditions to the Board's Order, the Application should be granted. (*See* Exhibits L and M).

V.

EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A: A portion of the Sanborn Atlas showing the subject property highlighted in red.

Exhibit B: A portion of the Zoning Map showing the Subject Property highlighted in red.

Exhibit C: Surveyor's Plat of the subject property.

Exhibit D: Aerial photograph of the Subject Property.

Exhibit E: Photographs of the surrounding area at night.

Exhibit F: Order of the Board in BZA Application No. 15875.

Exhibit G: Architectural Drawings.

Exhibit H: Section XVII of the 1957 edition of the Zoning Regulations.

Exhibit I: Photographs of Kendall Street lot where parking is proposed to be provided.

Exhibit J: Photographs of Fairview Avenue lot where parking is proposed to be provided.

Exhibit K: Support letters from Ward 5 Councilman Vincent Orange and Mayor Anthony Williams.

Exhibit L: Proposed Parking Plan.

Exhibit M: Proposed Security Plan.

Exhibit N: Outline of testimony of the Applicant Marc Barnes.

Exhibit O: Outline of testimony of the Architect.

Exhibit P: Outline of testimony of Steven E. Sher, Director of Zoning & Land Use Services, Holland & Knight, LLP.

VI.
WITNESSES

A. Representative of Marc Barnes.

B. Representative of the Architect.

C. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight, LLP.

VII.
COMMUNITY SUPPORT

At its regularly scheduled public meeting on October 4, 2001, ANC 5B unanimously voted to support this application.

VIII.

CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for a variance under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: _____
Norman M. Glasgow, Jr.

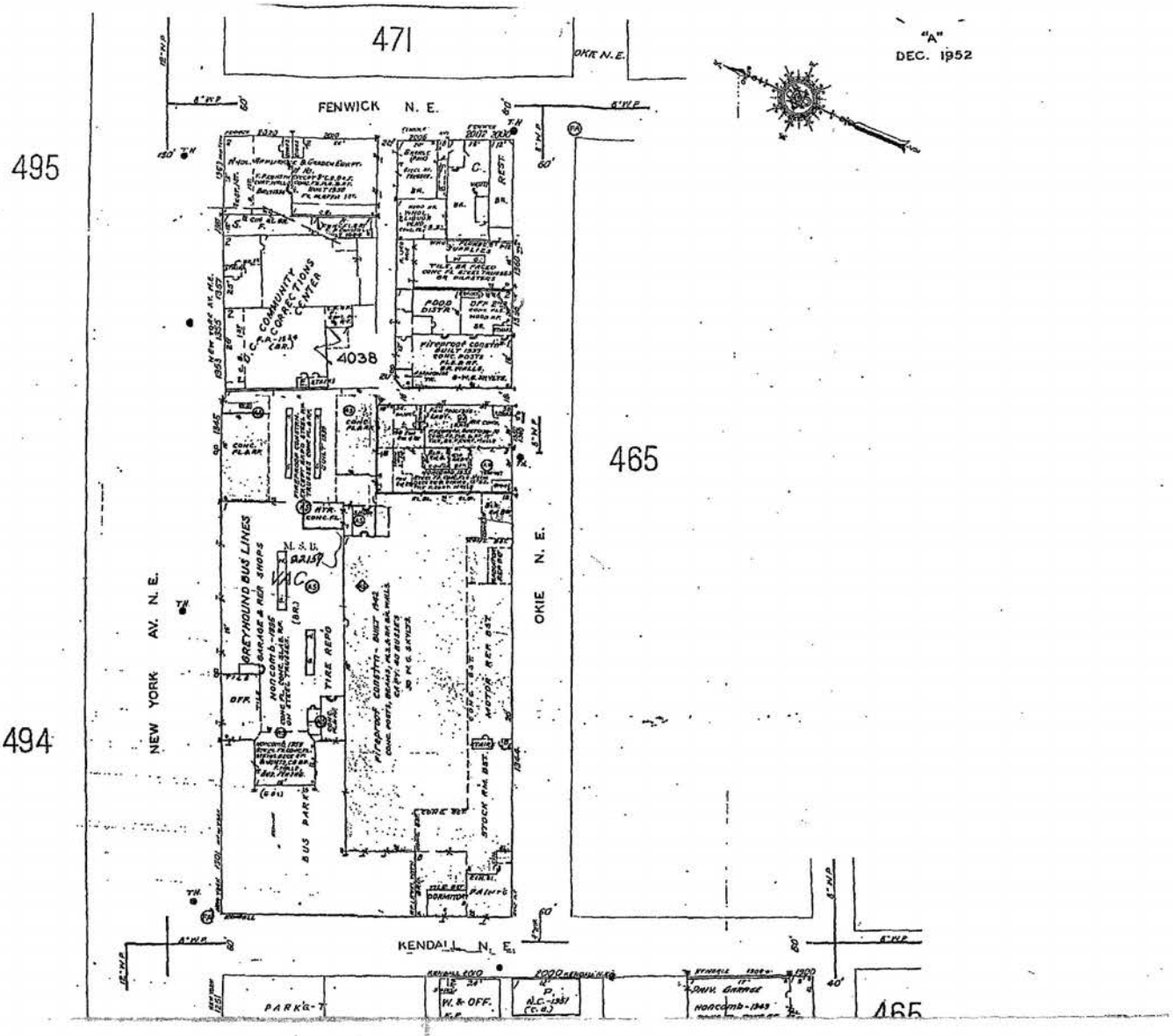
By: _____
Lloyd Jordan

By: _____
Lisa L. Jackson

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Suite 100
Washington, D.C. 20006
(202) 955-3000

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C

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., 9-19, 2001

Plat for Building Permit of SQ-4038 142/103

Scale: 1 inch = 20 feet Recorded in Book M1C8 Page F1C17

Receipt No. 5527

Furnished to: WILLIAM DORSEY

Surveyor, D.C.

By: DA

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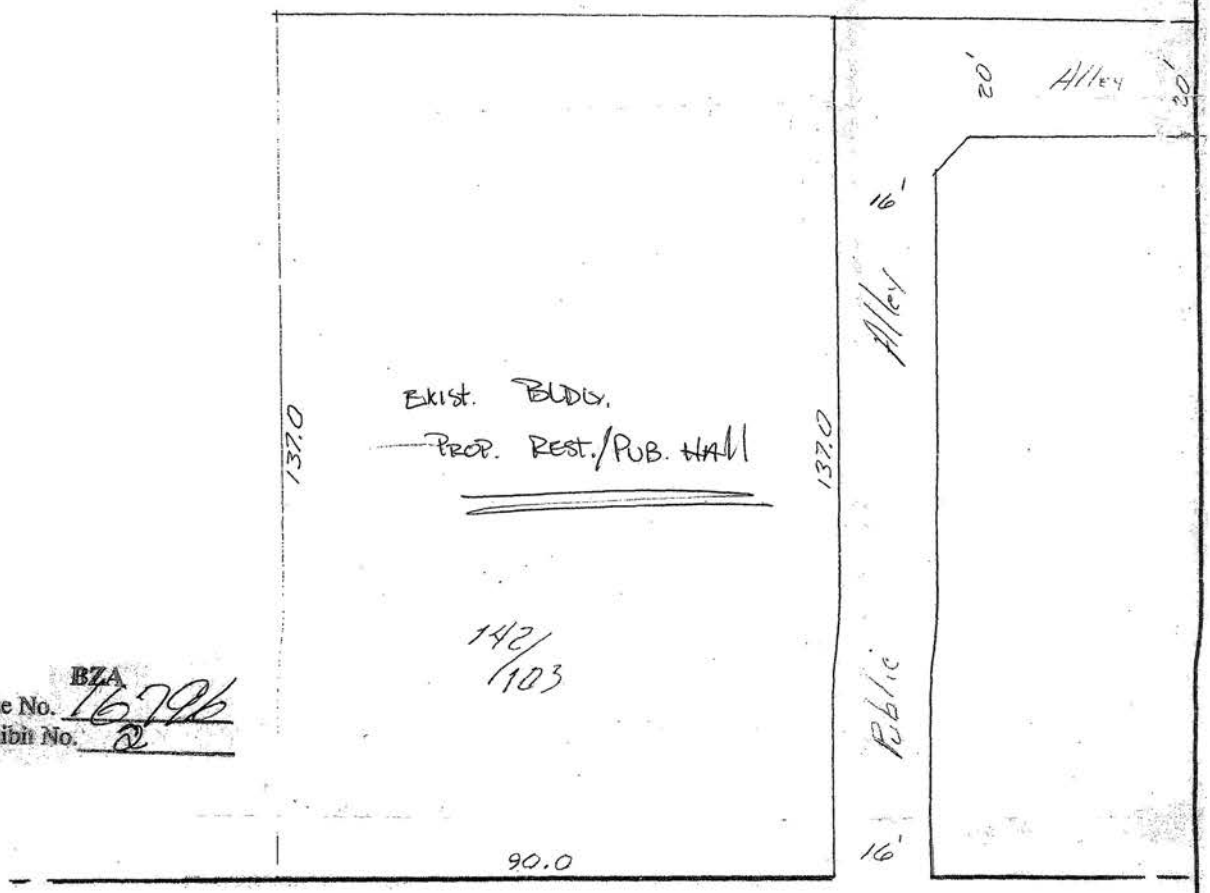
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: 9/19/2001

(Signature of owner or his authorized agent)

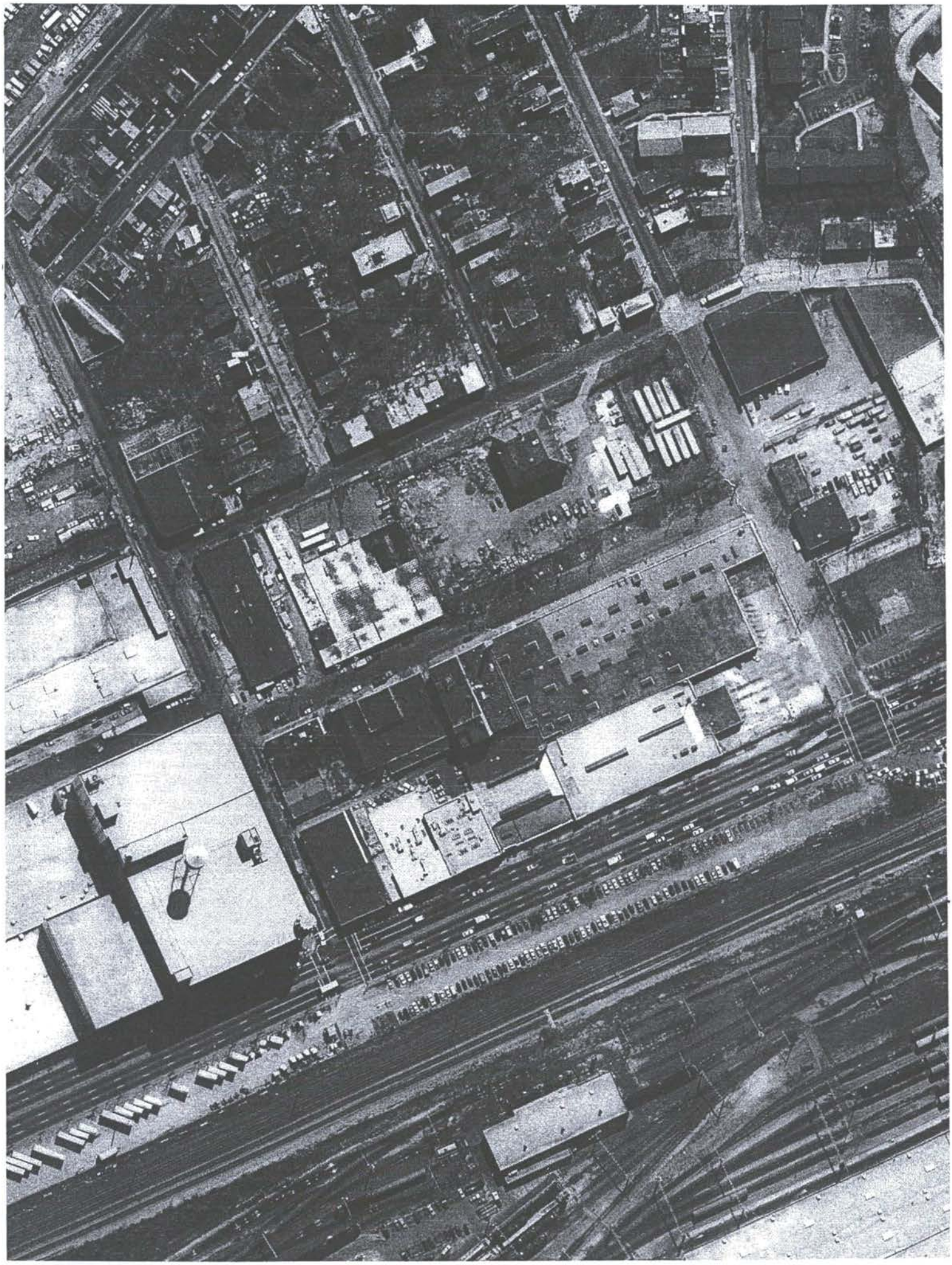
NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

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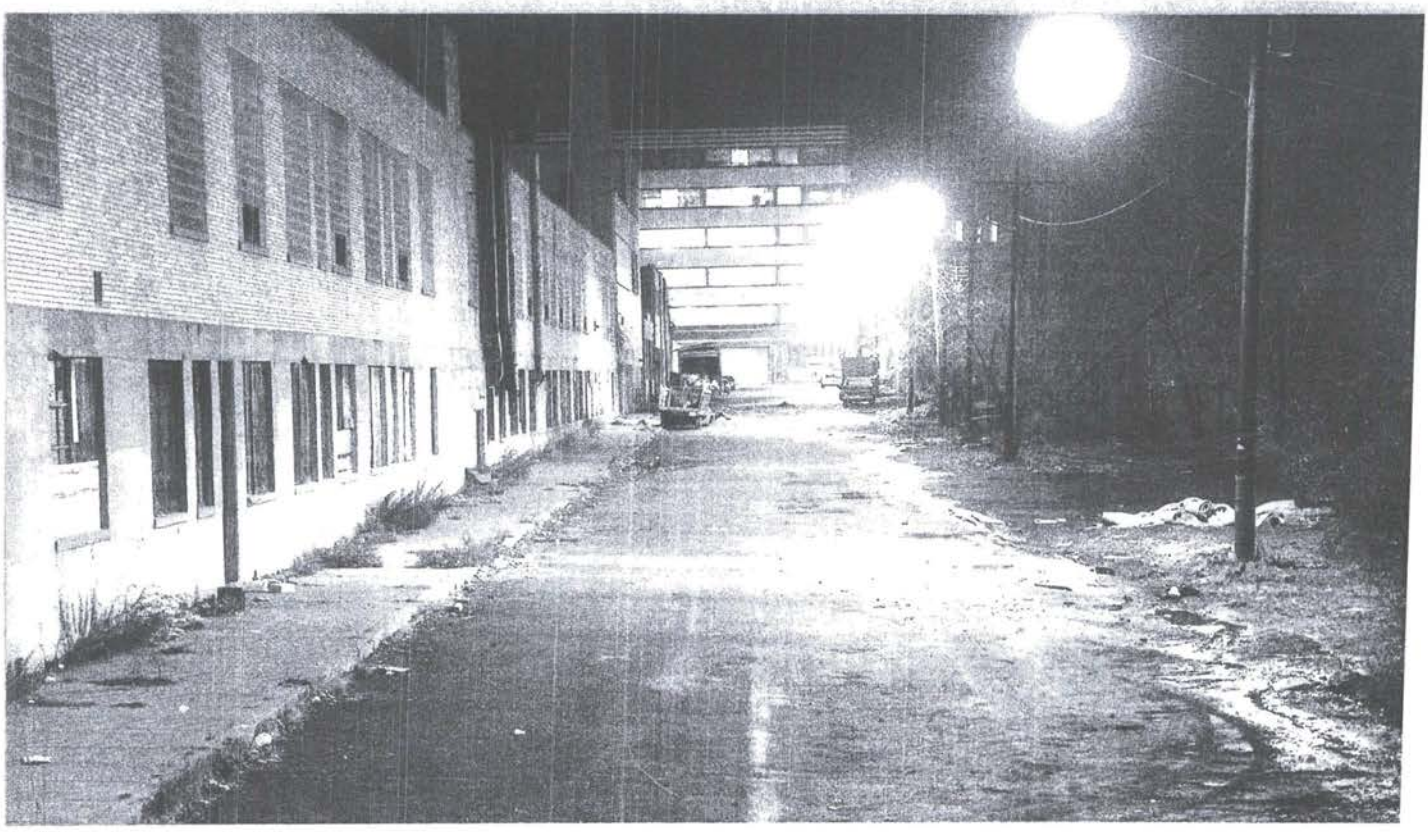


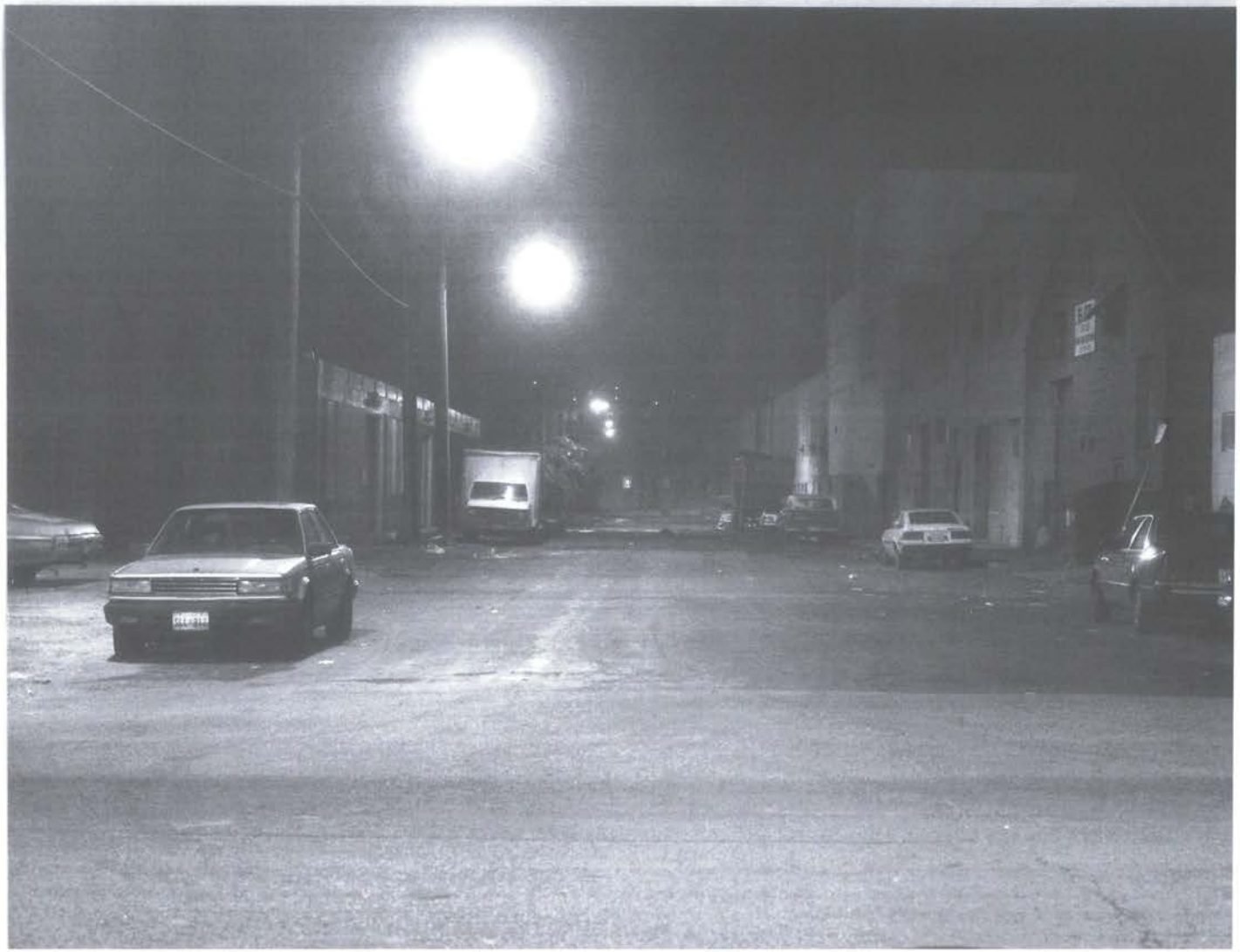
BZA
Case No. 16796
Exhibit No. 22











F

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15875 of George Basiliko, pursuant to 11 DCMR 3107.2 and 3108.1, for a variance from the off-street parking requirements (Subsection 2101.1) or, in the alternative, a special exception under Section 2108 to reduce the number of parking spaces required for nonresidential uses to allow a public hall - 300 seats on the first floor in a C-M-2 District at premises 1350 Okie Street, N.E. (Square 4038, Parcel 142/103).

HEARING DATE: December 15, 1993
DECISION DATE: February 2, 1994

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located on the north side of Okie Street, between Kendall and Fenwick Streets N.E. It is known as 1350 Okie Street, N.E., and it is zoned C-M-2.

2. The site is currently improved with a three-story warehouse and a loading dock.

3. The property is surrounded by industrial and warehouse uses.

4. The owner of the property, George Basiliko, is currently leasing it to Alton Gayle. For purposes of this order, Mr. Gayle will be referred to as the applicant.

5. The applicant proposes to establish a night club at the site. He applied for an occupancy permit for a public hall with a maximum capacity of 300 persons. The certificate of occupancy was denied because of the inability of the applicant to provide 30 parking spaces on the site as required by 11 DCMR 2101.1 which provides that one parking space shall be provided for every 10 persons.

6. The applicant comes to the Board seeking a special exception pursuant to Section 2108 to relieve him of the obligation to provide 15 spaces. He is also seeking a variance from Subsection 2101.1 to further reduce the number of required spaces by 15.

7. Five persons testified at the hearing. The applicant, the applicant's partner, and an Advisory Neighborhood Commission (ANC) 5B Commissioner, testified in support of the application.

The Chairperson of ANC 5B, and the owner of property next to the site, testified in opposition to the application.

8. With regard to the special exception relief, the relevant provisions of Section 2108 provide as follows:

2108 REDUCTION OF PARKING SPACES: AUTHORITY OF THE BOARD

2108.1 The Board of Zoning Adjustment is hereby authorized to reduce the amount of parking spaces required for nonresidential uses by Section 2101.1 pursuant to the provisions of this section.

2108.2 The amount of required parking spaces shall not be reduced by more than twenty-five percent (25%); Provided, that for a use which is in the category of "All Other Uses" in the table in Section 2101.1, the amount of required parking spaces shall not be reduced by more than fifty percent (50%).

2108.3 The Board shall give consideration to the following:

a. The nature and location of the structure;

b. The maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;

c. The amount of traffic congestion existing or which the building or structure can reasonably be expected to create in the neighborhood;

d. The quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use; and

e. The proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area, or a ride-sharing program approved by the District of Columbia Department of Public Works.

Section 3108, which authorizes the Board to grant special exception relief provides that a special exception may be granted where granting the relief will not tend to affect adversely the use

of neighboring property, and where it would be in harmony with the general intent, purpose and integrity of the zone plan.

9. The applicant originally requested a special exception for a 50 percent reduction of parking spaces under Subsection 2108.2 based on the premise that the use falls within the category of "All Other Uses" in the table in Subsection 2101.1. The Board determined, however, that the proposed use is a "dance hall", an enumerated category in Subsection 2101.1. Therefore, under Subsection 2108.2, the Board is only authorized to reduce the number of required parking spaces by 25 percent - 8 spaces. (A variance will be needed to relieve the applicant of the remaining 22 spaces).

10. Nature and Location of the Structure:

The applicant stated that the subject property is a three-story block and concrete building, the first floor of which contains 12,000 gross square feet of space.

The Office of Planning (OP), by memorandum dated January 18, 1994, stated that the property is located in a C-M-2 District which permits medium bulk commercial and light manufacturing uses to a maximum floor area ratio (FAR) of 4.0 and a maximum height limit of 60 feet, with new residential uses prohibited.

The applicant stated that the structure is surrounded by warehouses.

A supporting witness testified about the uses in the area of the site. He stated that there is a school yard that is currently the headquarters for a private construction company. The property is used as a storage facility for the construction equipment and other items. The company does not maintain the rear of the property that abuts Okie Street. Also near the subject site, there are six trailers that are used as temporary emergency shelters during cold weather.

Behind the site, there is a halfway house. At the rear of this facility there is a small lot that is used for parking. This space is inadequate for parking and the facility also uses 12 spaces on a lot owned by the Hecht Co. located across the street on New York Avenue.

The supporting witness testified that there are other uses and businesses nearby as well. There is an auto repair shop which the witness believes is an illegal usage. There is a taxi cab repair shop, an automotive garage, Louie's Carryout, Greyhound maintenance division, and ProFish seafood distributors. The witness noted that

the Hecht Co. warehouse is on the corner of Fenwick and Okie Streets. There is also a tomato factory in this area but there are no residential areas facing Fenwick Street near Okie Street.

11. Maximum Numbers of Employees and Guests:

The applicant testified that the club will have a maximum capacity of 300 persons at any one time. He stated that most people go to clubs in couples, therefore he expects that between 50 and 150 cars will be used to bring the customers to the site.

12. Traffic Congestion:

The applicant stated that he does not expect traffic congestion to result from the use of his property. He stated that he plans to operate on Thursdays and Sundays from 9:00 p.m. to 2:00 a.m. and Fridays and Saturdays from 9:00 p.m. to 3:00 a.m.

The applicant's partner testified about the operating hours of other businesses in the area. He stated that Pro Fish opens around 2:00 a.m. to prepare the fish for delivery by drivers around 9:00 a.m. when other businesses open. The restaurant is open from 5:00 a.m. to 5:00 p.m. The main business is for breakfast and lunch therefore there is not much traffic after 3:00 p.m. The taxi cab company that fixes cars operates between approximately 7:00 a.m. and 6:00 p.m. The parking garage and lot across the street from the site is used by a church that parks its buses there. The buses are only removed on Sunday morning and the lot is monitored from 8:00 a.m. to 4:00 p.m.

The applicant stated that the area will not be adversely affected by traffic because the hours of operation of surrounding businesses do not coincide with the hours of his business. Further, he stated that the site is easily accessed from New York Avenue and there is no need to travel through residential neighborhoods to reach the property.

The supporting witness noted that there are New Jersey barriers at the end of Okie Street creating a dead end near Kendall Street. He testified that there is adequate room for cars to turn around at this end of Okie Street because it is wide enough for tractor trailers to make U-turns.

A witness in opposition to the application stated that this area is not wide enough for cars to make U-turns without congestion.

The Department of Public Works (DPW), by memorandum dated January 7, 1994, stated that Okie Street is a 60-foot right of way.

13. Parking availability off-site:

The applicant testified that he has entered into an agreement with the owner of Fenwick Automotive Storage Company to allow about 15 cars to park on the lot located about 1 1/2 blocks from the club at 1805 Fenwick Street, N.E. He stated that the owner of the subject building has recently purchased additional property near the intersection of Okie and Kendall Streets specifically to provide additional off-street parking for this use. Approximately 14 cars can be parked on this property. The applicant stated that he is also exploring the possibility of renting space on the church's parking lot.

The applicant testified that there is enough space on the street for curbside parking.

DPW noted that parking is allowd on both sides of Okie Street at all times and that up to 25 curb parking spaces will be available along Okie Street between Kendall and Fenwick Streets. DPW stated that to the extent that the night club patrons are willing to walk a half block or more from the site to their cars, there will be enough on-street parking to accommodate the project. Therefore, DPW has no objection to the application.

The opposing neighbor testified that the streets in the vicinity would accommodate on-street parking of about 15 cars.

14. Availability and Proximity of Public Transportation:

The applicant testified that there are no metrorail stations nearby. However, metrobus service is available on New York Avenue and West Virginia Avenue N.E. The applicant stated that while club patrons do not usually travel by bus, the service is available should they choose to use it.

15. Adverse Impact on Use of Neighboring Property:

The applicant stated that the closest residential uses are apartments located on Gallaudet Street. He maintains that having cars park off-site will not have an adverse effect on these residential uses or on the industrial uses nearby.

Mr. Diedrich, the opposing neighbor, testified that there are houses on Gallaudet Street that were burned out but are in the process of being refurbished. People will be moving back into them once they are complete.

Advisory Neighborhood Commission (ANC) 5B believes that the applicant's club will greatly increase the amount of vehicular and pedestrian traffic in the Ivy City residential area. The ANC representative stated that while the proposed site is accessible

from the New York Avenue corridor, it is highly unlikely that patrons traveling north or west would use this route.

16. Harmony with the Zone Plan:

The ANC 5B representative stated that to establish a night club at the site is extremely incompatible with the existing mixture of public and commercial facilities in this area. The ANC noted that the D.C. Community Correctional Center No. 4 is located at 1355-57 New York Avenue, N.E. This facility houses approximately 200 residents (inmates) and the director of the facility believes that the club would have an undersirable influence on the center's residents.

None of the parties submitted evidence related to the impact of off-site parking on the zone plan.

17. The Board is authorized to grant a variance where the owner is faced with a practical difficulty arising out of some unique or extraordinary condition of the property, where the granting the relief will not be of substantial detriment to the public good and where it will not impair the intent, purpose and integrity of the zone plan.

18. Uniqueness/Extraordinary Conditions and Practical Difficulty:

The applicant testified that the structure on the subject lot occupies 100 percent of the lot. Therefore the required parking spaces cannot be provided. In testimony at the hearing, the applicant and other witnesses noted that most other lots in the area have space to park vehicles.

19. Detriment to the Public Good:

The applicant maintains that the inability to provide parking on site will not be harmful to the public good. He stated that there is plenty of on-street parking because most of the nearby properties are not used during the club's operating hours. He also stated that those near the facility will not be disturbed because they are not operating late at night. Finally, the applicant maintains that his patrons will be safe walking between the Fenwick Street lot and the club. He pointed out that the lot is only 1 1/2 blocks away.

The supporting witness testified that the applicant's business will help the neighborhood at night when the area is quiet. He testified that patrons walking between the club and the lot on Fenwick Street will be safe because there is activity at the Hecht Co. Warehouse facility and Fenwick Street is lit.

The ANC 5B representative raised some concerns about the safety of patrons who have to walk between the club and the parking lot. If the applicant is relieved of his obligation to provide parking at the site, and parking is provided at 1805 Fenwick Street, the safety of patrons will be jeopardized because the area is high in crime and infested with drugs and prostitution. The ANC maintains that the lighting along this path is insufficient. The ANC representative stated that these conditions of blight and poor lighting would make it difficult for the police to provide constant surveillance.

Addressing some of the concerns raised by the ANC, the applicant's supporting witness testified that the owner of 1805 Fenwick Street has verbally agreed with the applicant to provide more exterior flood lighting to help secure the area. He has also agreed to mount a video camera at his property to record traffic on the street. The witness also testified that having the club will benefit the area by bringing people to the area which is deserted at night.

The ANC chairman conceded that more lighting may make it safer, however she stated that she still opposes the application.

Testifying in opposition to the application, the adjacent property owner stated that the proposed use will lower the value of his property because it will attract young people and the problems and bad behavior associated with them.

With regard to parking at the Fenwick Street property, he stated that the patrons would have to park at the rear of the lot because trailers are on the front of the lot.

20. In the report submitted to the Board, the Office of Planning (OP) expressed the opinion that the applicant has not met the burden of proof relative to the zoning relief sought in this application. OP stated that the applicant is requesting parking relief for 87 percent of the on-site spaces. The Board can only grant relief for 50 percent. In addition, the Department of Corrections has verbally expressed to the Office of Planning its objection to the proposed facility because of its close proximity to and potential negative impact on the 252-bed correctional treatment facility abutting the rear of the subject site. Based on the above analysis, the Office of Planning recommends denial of this application.

21. By report dated September 1, 1993, the Metropolitan Police Department commented on the application. The department stated that the property is located in the Fifth District and is patrolled by Scout Car 147.

The department stated that based on its review of the application, it does not appear that the change proposed will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department stated that it does not oppose the application.

22. By memorandum dated October 21, 1993, the D.C. Fire Department indicated that it has reviewed the application and that it has no objection to the request.

23. At the end of the public hearing on the application, the Board left the record open to allow the applicant to submit the following: a) a statement addressing the variance test regarding the off-street parking with the inclusion of a site plan showing all improvements on the lot and the identification of legal parking spaces that may be located on-site; b) a written agreement between the applicant and Advisory Neighborhood Commissioner Jeffrey Desmukes, of Single Member District 5B-09 regarding lighting and safety on Okie Street; c) lighting of the public right-of-way from the parking lot at 1805 Fenwick Street to the subject site; d) agreement with the owner of the 1805 Fenwick Street parking lot regarding the lot's operation during the applicant's use of it (i.e. use of the gate, attendant, security, lighting, signage, etc.), and; d) a new letter in support of the application from Councilmember Harry Thomas. The applicant's submission was to be filed by January 19, 1994. Responses and proposed findings were due by January 26, 1994.

At the public meeting of February 2, 1994, staff informed the Board that none of the requested documents were submitted by the applicant.

CONTESTED ISSUES:

1. Whether there is adequate space to make U-turns at the end of Okie Street near Kendall Street.

2. Whether the absence of parking on the subject lot will increase the amount of vehicular and pedestrian traffic in the Ivy City residential area.

3. Whether the proposed use of the site will have an impact on the correctional facility located behind the site.

4. Whether there is adequate lighting or other devices to ensure the security of patrons who park on the Fenwick Street lot and walk between the parking lot and the night club.

5. Whether the applicant's patrons will be able to park toward the front of the lot on Fenwick Street.

6. Whether the proposed night club use will lower the property value of the property adjacent to the site.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. There is adequate space at the end of Okie Street for cars to make U-turns.

2. It is likely that vehicular and pedestrian traffic will increase in the Ivy City residential neighborhood becuse approximately 150 cars are anticipated by the applicant and only about 25 cars can park on Okie Street.

3. Because the night club is a matter of right use, the impact of the use on the correctional facility or on the value of adjacent property is not proper for consideration by this Board. Therefore the Board makes no findings with regard to these issues.

4. The Board is without sufficient substantive evidence to determine that adequate measures will be taken to secure the safety of patrons using the parking lot.

5. The Board is without sufficient evidence to determine the location of space for parking on the Fenwick Street lot.

CONCLUSION OF LAW AND OPINION:

Based on the foregoing evidence of record the Board concludes that the applicant is seeking a special exception to reduce the number of required parking spaces by 25 percent for the operation of a night club in a C-M-2 District. The granting of such a special exception requires a showing through substantial evidence that the application can be granted as being in harmony with the intent, purpose and integrity of the zone plan and that it will not affect adversely the use of neighboring property. The applicant must also meet the provisions of Section 2108 governing the reduction of parking spaces.

The Board concludes that the applicant has failed to meet the burden of proof. The Board concludes that the applicant failed to demonstrate that granting the relief requested will not affect adversely the use of neighboring property.

The Board concludes that the applicant is also seeking an area variance to reduce the number of parking spaces by 75 percent for the operation of a night club. The granting of such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional

condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board concludes that the applicant has demonstrated a practical difficulty arising from an exceptional condition of the property in that the lot is occupied almost entirely by the subject structure and no parking can be provided on the site. However, the Board concludes that the applicant has failed to submit substantial evidence to demonstrate that the measures to be taken will make patrons reasonably safe in the area if they must park away from the site. Because of the lack of evidence on this issue, the Board concludes that the applicant has failed to demonstrate that the variance application can be granted without substantial detriment to the public good.

In light of the foregoing, the Board ORDERS that the special exception and variance are hereby DENIED.

VOTE: 5-0 (Maybelle Taylor Bennett, George Evans, Craig Ellis and Angel F. Clarens to deny; Laura M. Richards to deny by proxy).

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

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 2 1994

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

15875Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 15875 of **George Basiliko**, pursuant to 11 DCMR 3107.2 and 3108.1, for a variance from the off-street parking requirements (Subsection 2101.1) or, in the alternative, a special exception under Section 2108 to reduce the number of parking spaces required for nonresidential uses to allow a public hall – 300 seats on the first floor in a C-M-2 District at premises 1350 Okie Street, N.E. (Square 4038, Parcel 142/103).

HEARING DATE:	**December 15, 1993**
DECISION DATE:	**February 2, 1994**
DISPOSITION:	The Board **DENIED** the application by a vote of 5-0 (Maybelle Taylor Bennett, George Evans, Craig Ellis and Angel F. Clarens to deny; Laura Richards to deny by absentee vote).
FINAL DATE OF ORDER:	August 2, 1994

ORDER DENYING WAIVER OF THE RULES

This decision and Order arises out of a motion for reconsideration or rehearing of BZA application No.15875 filed by the applicant, George Basiliko.

PROCEDURAL HISTORY

The Board denied the above application by its order dated August 2, 1994. By letter dated September 26, 1994, the applicant requested that the Board waive the 10-day filing requirement to receive a request for rehearing of the application. The applicant filed the request in the Office of Zoning on September 27, 1994. Section 3301.1 of the Zoning Regulations provides that the Board may, for good cause shown, waive any of the provisions in Chapter 33 if in the judgment of the Board, such a waiver would not prejudice the rights of any party and is not otherwise prohibited by law. Pursuant to 11 DCMR 3332.2, motions for rehearing are to be filed within ten days of the filing and service of the Board's written order. In this case, the motion for rehearing would have been due on August 12, 1994. Under Subsection 3304.2, with three days added for mailing, the applicant's motion was due August 15, 1994.

In the letter, the applicant's representative stated that the request for a rehearing could not have been filed in a timely manner because she (the representative) was out of the country from July 25, 1994 to August 16, 1994, and was unable to assist in preparing the request. She noted that her firm prepared most of the information submitted to the Board in the original application. She explained that when the Board's Final Order was received, she was out of the country. She indicated that upon her return and review of the situation, she attempted to contact Mr. Lyons, the Secretary to the Board. However, Mr. Lyons was on vacation. On August 24, 1994, she

received assistance from BZA staff member, Tracey Rose, who faxed to her a copy of the Board's rules related to reconsideration and rehearing.

Along with the letter of September 26, 1994 requesting a waiver, the applicant's representative submitted the following:

- a letter dated September 9, 1994 from R. Abrams (Social Engineer Company, Inc.) thanking the applicant's lessee (Mr. Alton Gayle) for permitting the use of the subject property for rehearsal space and for working with Mr. Abrams' group in erecting a protective fence to allow parking at the end of Okie Street;

- photographs of the subject property;

- drawings of the site and surrounding area;

- a letter dated August 31, 1994 from the Chairperson of ANC 5B clarifying a mistake that was made in their previous letter and expressing support for the proposed business and the variance relief; and

- a letter dated September 26, 1994 from Councilmember Harry Thomas, Sr., expressing support for the application and the proposed business.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

No responses to the request were received from parties.

At the public meeting of October 5, 1994, the Board considered the waiver request. The Board noted that the applicant was represented by sophisticated lawyers and the Board cannot accept that the applicant was unable to find counsel to assist in filing a motion for rehearing in a timely fashion. The Board stated that if the motion had been submitted 10 to 15 days after contacting BZA staff, then the delay would have been reasonable. However, the motion was filed more than one month after the applicant's representative returned, and more than one month after contacting BZA staff. In the Board's view, this period of time was unreasonable. The Board finds that once the final order was received, the applicant was not diligent in requesting a rehearing. The applicant should have submitted some type of documentation expressing the intent to request a rehearing. The Board's Rules on the procedures and timeliness for filing post hearing motions are clear.

In reviewing the motion and supplemental material, the Board noted that it appears that the applicant used the time between *receiving the assistance of staff* and *filing the motion for rehearing* in order to garner support for the case. The Board does not wish to foster a policy of applicants using the inability to contact staff as an excuse for not abiding by the Board's Rules. While the Board believes that the applicant may have a legitimate reason for the late filing during the period of time that his representative was out of town and after which the order had been issued (August 2 - 16). No good cause was shown for not filing during the period between August 24 and September 27, 1994.

In light of the finding that the applicant has failed to demonstrate good cause, the Board concludes that the test established in the Board's Rules for granting a waiver of the filing requirement has not been met, and the waiver of the 10-day filing requirement is hereby **DENIED.**

VOTE: **4 – 0** (Laura M. Richards, Craig Ellis, Maybelle Taylor Bennett, and Angel F. Clarens to deny the waiver request; Susan Morgan Hinton not voting, not having heard the case).

EXCEPTIONS:

The Order Denying Waiver of the Rules was sent out for exceptions by correspondence dated February 16, 1999. No exceptions to the proposed order were filed. The Board considered the Order at its public meeting of May 5, 1999, and proceeded to deny the request.

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

ATTESTED BY:

JERRILY R KRESS, FAIA
DIRECTOR

Final Date of Order: JUN - 9 2000

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA"

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EXHIBIT 23G

FROM

CASE 16796

IS AN OVERSIZED DOCUMENT

PLEASE SEE AT OFFICE

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Side yard.—A side yard shall be not less than 2 inches wide for each foot of building height, nor less than 1½ inches wide for each foot of building length, whichever is greater. Such yard need not exceed 20 feet in width provided it has a width of not less than twice the width required for each foot of building height. A side yard shall be not less than 5 feet wide. (As amended June 9, 1944.)

Open court.—An open court shall be not less than 5 feet wide, nor less than 2½ inches wide for each foot of height of such court, nor less than 2 inches wide for each foot of length of such court from the closed end.

Inclosed court.—An inclosed court shall be not less than 6 feet wide, nor less than 2½ inches wide for each foot of height of such court, nor shall its area be less than twice the square of its required least dimension.

Percentage of lot occupancy.—No building, with its accessory buildings, shall occupy in excess of 60 percent of an interior lot, nor in excess of 70 percent of a corner lot, nor in excess of 75 percent of a triangular lot.

SECTION XVI (*a*).—*"B" restricted-area district*

In the "B" restricted-area district the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be the same as for "B" area district, except that hereafter no building shall be erected for use as an apartment house, or a flat, or a hotel, nor shall any existing building be enlarged for use as an apartment house, a flat, or a hotel, nor shall any building hereafter erected be used for these purposes. (June 24, 1924.)

SECTION XVII.—*"C" area district*

In the "C" area district the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be as follows:

Rear yard.—On corner lots there shall be a rear yard having either a depth of not less than 5 percent of the depth of the lot, or a depth of not less than 3 inches for each foot of building height, whichever is greater. This yard need not exceed 10 feet in depth, provided it has a depth of not

less than 3 inches for each foot of building height. On interior lots there shall be a rear yard having either a depth of not less than 10 percent of the depth of the lot, or a depth of not less than 3 inches for each foot of building height, whichever is greater. This yard need not exceed 15 feet in depth, provided it has a depth of not less than 3 inches for each foot of building height. As amended Feb. 13, 1943.)

Side yard.—A side yard shall be not less than 1½ inches wide for each foot of building height, nor less than 1 inch wide for each foot of building length, whichever is greater. Such yard need not exceed 15 feet in width provided it has a width of not less than twice tthe width required for each foot of building height. A side yard shall be not less than 5 feet wide. (As amended June 9, 1944.)

Open court.—An open court shall be not less than 5 feet wide, nor less than 2 inches wide for each foot of height of such court, nor less than 2 inches wide for each foot of length of such court from the closed end.

Inclosed court.—An inclosed court shall be not less than 6 feet wide, nor less than 2 inches wide for each foot of height of such court, nor shall its area be less than twice the square of its required least dimension. For a building used for dwelling purposes, an inclosed court shall be not less than 2½ inches wide for each foot of height of such court.

Percentage of lot occupancy.—No building, with its accessory buildings, shall occupy in excess of 75 percent of an interior lot, nor in excess of 90 percent of a corner or a triangular lot, except that a building or that portion of a building used for commercial or industrial purposes, with its accessories, may occupy 100 percent of the lot for a height not to exceed 20 feet.

SECTION XVIII.—*"D" area district*

In the "D" area district the minimum dimensions of yards and courts and the maximum percentage of lot occupancy shall be as follows: provided, however, that any building or part of a building designed or used as a dwelling, tenement, or apartment house hereafter erected or struc-

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ANTHONY A. WILLIAMS
MAYOR

July 16, 2001

Mr. Marc Barnes
1355 U Street, NW
Washington, DC 20009

Dear Mr. Barnes:

I support and commend your efforts in establishing your new venue at 1350 Okie Street, NE. With the success of Republic Gardens, you have established yourself as a major force in the revitalization of U Street and we are confident that your new endeavor will have the same effect the Okie Street neighborhood.

The New York Avenue corridor is a major focus for development and your project is a welcomed investment. The opening of your establishment will surely draw greater interest in the area and be a catalyst for future development. Please do not hesitate to call upon my office if we can be of any assistance.

Sincerely,

Anthony A. Williams

Anthony A. Williams

AAW/lkp

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

October 22, 2001

Board of Zoning Adjustment
Room 210
441 4th Street, N. W.
Washington, D. C. 2001

Re: BZA Application No. 16796
1350 Okie Street, N. E.

Dear Members of the Board:

As the Ward Councilmember representing the area of the city in which subject property is located, I wish to express my support of the application as being in the best interest of the neighborhood and Ward 5 in furthering development in this important area located just off New York Avenue, N. E.

I am familiar with the plans and proposal for the redevelopment of the site and the improvement of the building which has already taken place. I am also aware that the local Advisory Neighborhood Commission is in support of the application. In addition, this development has caused the repavement of Okie Street and uniform painting of the buildings on the block. Several years ago I led an effort to remove 5 tons of trash and debris from this street.

I urge the Board to grant the application as furthering the interest of the community and the District of Columbia.

Very truly yours,

Vincent B. Orange, Sr.
Councilmember, Ward 5



PARKING PLAN FOR 1350 OKIE STREET*

	Address	Lot Area	Property** Owner	Number of Spaces
Square 4041, Parcel 142/86	1249 New York Avenue, N.E.	11,413 square feet	Treasury Services/ Greyhound Corp.	78
Square 4039, Lot 17	2020 Fairview Avenue	24,999 square feet	Frank & Carole Gailor	120
Fenwick and Kendall Streets	2000 block	N/A	Public Space	50
Okie Street	1300 block	N/A	Public Space	75

*Valet parking will be provided unless refused by patron. Additional or alternative parking spaces may be identified prior to application for a certificate of occupancy. In any event, a total of 230 spaces will be available as required.

**All property owner information is from the 2000 District of Columbia Assessment Directory.

WAS1 #1024283 v1



SECURITY PLAN

1. Hire off-duty officers of the District of Columbia Metropolitan Police Department to patrol the hall, the parking lots, and the areas between the parking lot and the hall.

2. Provide valet parking option to parking lots identified in parking plan.

WAS1 #1024288 v1



OUTLINE OF TESTIMONY OF APPLICANT MARC BARNES

I. Introduction of Applicant

A. Background and Prior Development/Business Experience

II. Description of Proposal for 1350 Okie Street

III. Brief Overview of Development Plan for the Site

IV. Brief Description of Variance Request

A. Description of Parking and Security Plan for Site
B. Description of community outreach efforts
C. Description of widespread support for project (Mayor Williams, Councilman Orange, etc.)

V. Conclusion



OUTLINE OF TESTIMONY OF ARCHITECT

I. Introduction

II. Site Description

III. Description of Proposed Site Plan

IV. Conclusion



OUTLINE OF TESTIMONY OF
STEVEN E. SHER, LAND PLANNER

I. Introduction

II. Site Location

III. Site Description

IV. Zoning

V. Description of Requested Variance from parking requirement of the Regulations (§ 2101.1)

VI. Discussion of Compliance with Variance Standard

VII. Conclusion

WAS1 #1024559 v1