cultural development corporation

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The Honorable Geoffrey Griffis, AIA
Chairperson, Board of Zoning Adjustment
Government of the District of Columbia
One Judiciary Square, Suite 210 South
441 First Street, NW
Washington, DC 20001

Re: BZA Case 16920 (Special Exception to Establish an Art Gallery within a Portion of the Premises Located at 1629 21st Street, NW – Lot 122, Square 93)

Dear Mr. Chairman and Members of the Board:

The Cultural Development Corporation has become aware of and interested in the above-captioned case. Through this letter, and by subsequent personal appearance at the continuation of the hearing November 12, 2002, we hope both to indicate our support for the applicant and to make you aware of the nature of art galleries across the District of Columbia. We will state both the constraints and challenges they face and the contributions they make to our city. We also comment on the standards under which the instant case must be heard, how those standards came about, and what they mean.

Cultural Development Corporation

The Cultural Development Corporation is a non-profit organization created in 1998 that engages artists and cultural organizations in community development and revitalization efforts throughout the District of Columbia. We create partnerships between the arts and business communities that will stimulate economic activity and improve quality of life. In general it does this by –

- Facilitating city-wide (as well as downtown) arts and cultural development in conjunction with the network of neighborhood-based community development corporations;
- Advocating for arts and cultural investment to benefit Washington-based artists and arts organizations and the neighborhoods where they reside.

The Cultural Development Corporation is staffed and organized, among other things, to provide individual technical assistance to artist groups and cultural organizations to help in every stage of the facilities planning process. We also offer consulting services to developers, architects, owners, government agencies and other real estate professionals on developing space for arts uses.

Thus, we have knowledge of an array of arts uses, including art galleries, not only downtown but also across the District of Columbia. We are also fully aware of zoning requirements, including both opportunities that have been created as well as constraints that these impose.

Arts in the District of Columbia

The District of Columbia has long been recognized as a major center for the arts, arising initially mostly from its public and private museums, many on the Mall operating under the Smithsonian Institution as well as significant private collections such as that of the Phillips Collection, located within a few steps of the property under consideration in the BZA case that is now before you.

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However, while blessed with significant museums, Washington has not always been a "center for the arts" generally. A number of factors have changed that over the past forty years, including the establishment of the Kennedy Center for the Performing Arts, a number of new theatres across the District (such as The Shakespeare Theatre, Woolly Mammoth Theatre Company, and Studio Theatre).

Local government, building on a significant institutional base, has worked to create an environment in which arts of all kinds can operate. The Comprehensive Plan discusses arts and acknowledges its importance to the District.

During the late 1980's, the Zoning Commission took a series of steps to improve the regulatory climate for the arts, including art galleries. Among other things, the Zoning Commission –

- Created and mapped the Downtown Development ("DD") overlay zones and subzones. These include provisions in which space is effectively set aside for certain "preferred uses," including art galleries. Typically, these are uses that add vitality to the commercial street frontages at the ground level, uses that would not be able to afford the rents of normal commercial tenants such as general offices or major retailers.
- Created and mapped an Arts Overlay zone, principally along Fourteenth Street between Rhode Island Avenue and U Streets, NW. Again, that overlay zone provides incentives for legitimate theatres and art galleries
- Created means by which artists could produce their artistry and live within the same space, overcoming previous constraints to this.
- Expanded opportunities for the location of artists' studios.

At the same time, the Zoning Commission examined long-standing rules on where art galleries could be located. Prior to 1988, art galleries could be located as a matter of right within R-4 and less restrictive Residential zoned districts, sharing the same rights as those enjoyed to this day by museums, hospitals and private clubs, such as the Cosmos Club located just west of the Phillips Collection. However, while certain major institutions and uses are allowed to be established or enlarged as a matter of right, the Commission determined that art galleries, as a specific use, should be examined on a case by case basis when seeking to be established in R-5 and less restrictive zone districts.

It is worth noting that the R-4 and R-5-B zones have historically been applied to broad areas of the District noted for their art galleries including Capitol Hill (much of which is zoned R-4), Georgetown (much of which is also zoned R-4), and Dupont Circle (much of which is R-5-B). Typically, the specified residential zones flank commercial strips along major avenues, such as Pennsylvania Avenue, Wisconsin Avenue, and Connecticut and Massachusetts Avenues.

The Zoning Commission's Order 558 addressed artist studios and art galleries. While determining a "need to protect residential communities from the impact of business traffic ... and to discourage the diversion of housing stock to other uses," specifically rejected ending the ability of galleries to locate within certain Residential zones, as that would "deprive the District of the diversity which inheres in and enriches the life of the city. Art is an element of this diversity that should be encouraged, with reasonable controls."

The Commission went on to indicate that "it is not persuaded that an art gallery is a hostile element in residential zones, simply because it is not classed as a residential use. An art gallery provides a benefit to city life that is not incompatible with the variety of residential structures that are allowed in the R-5 zone. The [adopted, still standing] special exception process and standards will provide ample protection to adjacent and neighboring uses, and allow for retention of established galleries."

Thereupon, the Zoning Commission took the steps to implement their stated principles, defining "art gallery" and setting forth the standards by which each art gallery seeking to locate within an R-5 zone would thereafter be reviewed.

The Cultural Development Corporation's Familiarity with Art Galleries

In our four-year history, we have worked with a number of galleries on relocation and expansion plans, including Numark Gallery, Adamson Gallery, Hemphill Fine Art, and Fusebox. These four represent some of the most noted art agents in our city. In addition, we coordinate an implement the 3rd Thursday event in the 7th Street Arts District with 12 member galleries and cultural organizations.

BZA Case 16920

While not having first hand knowledge of the case before you, I am familiar with a large number of art galleries and ask you to accept my comments about three of the criteria:

> *361.2 The art gallery shall be located and operated so that it is not likely to become objectionable to adjoining and nearby property because of objectionable noise, pedestrian and vehicular traffic, hours of operation, or other objectionable conditions.*
>
> *361.3 The Board shall consider, and regulate, if necessary, the anticipated frequency, number of attendees, and other characteristics of show openings or other group gatherings.*
>
> *361.4 Adequate off-street parking, but not less than that required by chapter 21 of this title, shall be provided to accommodate occupants, employees, and visitors likely to come to the gallery by automobile.*

As to the first, art galleries do not "generate" significant vehicular or pedestrian traffic; they generate no noise at all. Rather, they provide a quiet place in which works of art can be displayed for sale on behalf of the original artist or a prior owner of a work of art. In the main, those who enter an art gallery are in the general area for some other principal reason, be it business or pleasure. While discretionary personal travel may well be influenced by what surrounds a given traffic generator – such as the Phillips Collection versus the Corcoran, few trips are made solely to visit a specific art gallery.

As to the second, art galleries do have receptions. These can include broad or extensive invitations, and significant numbers of persons. I am advised that the applicant in this case has agreed to conditions to restrict the number of, and size and character of, receptions they would hold, and to hours that respect nearby residential uses.

As to the third, given typical low daily "traffic," there is little need for parking spaces in the first place. However, in this case, I am advised that the applicant controls sufficient onsite parking spaces to meet the needs of daily traffic.

I further understand that while being supported by many who live in the surrounding community, there are nearby residents who are opposing this application. That is their right. I ask, however, that the Board ensure that it makes its decision exclusively on the basis of the established regulatory standards.

Thus, arguments to the effect that this (or any other) neighborhood (in some other "art gallery" case you may hear at some later time) is "saturated" or at some kind of "tipping point" are not

germane. Such issues are properly addressed to the Zoning Commission, not the Board of Zoning Adjustment. The Zoning Commission can examine such issues, establish any validity they have, and fashion appropriate remedies as part of its legislative duties. More particularly, the Board should note that only three uses it considers as Special Exceptions include "cumulative impact" language in which "saturation" or "tipping point" arguments have any conceptual place: Special Exceptions for Home Occupations, for Community Based Residential Facilities, and Child and Elderly Day Care centers. It is significant that "cumulative impact" regulations had already been fashioned and adopted when the Zoning Commission took up the case of Art Galleries and Artist Studios. It did not provide for any such standard. Nor should you.

Diminishing Numbers of Art Galleries

Clearly, the Zoning Commission intended no harm to existing or future art galleries when it established the Special Exception provisions. What has been the actual effect?

A search of your records reveals only a single case of an owner seeking approval under the adopted provisions. It appears that even the Special Exception process imposes too high a cost or delay and uncertainty to most art galleries and owners. Thus, while not seeking to thwart establishment of art galleries, the effect appears to have been vastly more chilling than intended citywide.

Within the Dupont Circle area, I have reviewed information about art galleries that existed in 1990 and now that the applicant has submitted to your record. Within the surrounding area, there has been a net loss of galleries. Thus, art galleries cannot account for any discernable proportion of the issues area residents face. Rather, the Board should realize that residences located, as those in this area are, within a small triangle of major arterials, bisected by a minor arterial (R Street) and another one-way street (21st) leading past a major institution (the Phillips Collection). The area is flanked by commercial and Special Purpose zones on two sides, and further overlaid with a Diplomatic overlay zone under which several chanceries operate within the same triangular area. This is already a very diverse location. It is a location with a substantial number of residential uses, enriched by and at times challenged by some of these – but not art galleries in general and not the art gallery seeking to relocate to 1629 21st Street, NW.

Conclusion:

This applicant has fully satisfied the requirements, has agreed to limits to prevent any adverse external effect, and that wants to relocate its facility and works to a location where other galleries have existed for some time and close to a major museum, the Phillips Collection. Clusters of art galleries enrich each other and the communities in which they exist.

Please evaluate the case before you on its merits under the prevailing regulatory and legal standards recalling that all uses seeking approval as Special Exceptions are deemed ones appropriate for the setting in which they are located and are ordinarily to be granted if the conditions are satisfied.

Thank you,

Anne L. Corbett
Executive Director

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