STATEMENT OF EXISTING AND INTENDED USE AND
STATEMENT OF SATISFACTION OF APPLICANT'S BURDEN
OF PROOF FOR SPECIAL EXCEPTION AND VARIANCE

Application of Scott R. Gillis

December 10, 2002

This statement ("Statement") is of the existing and intended use of the building and an explanation as to the manner in which the application ("Application") of Scott R. Gillis meets the specific tests and burden of proof identified in the Zoning Regulations for a special exception and a variance. This Statement is required by the Office of Zoning pursuant to Form 120 Exhibit 1 (Revised 4/29/02) and is submitted on behalf of Scott R. Gillis by his attorneys, Greenstein DeLorme & Luchs, P.C. by Jacques B. DePuy, Esquire and Lyle M. Blanchard, Esquire.

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Summary of Application. The Application seeks a special exception pursuant to Sections 3104.1 and 2003.1 of the Zoning Regulations to allow an existing nonconforming use (retail grocery store) to change to another nonconforming use (artist studio for guitar making). This artist studio will have only one employee who crafts approximately fifteen (15) guitars per year. Few customers will ever visit the studio and deliveries will occur approximately once a month. In addition, an area variance is sought pursuant to Sections 3103 and 2003.5 to allow relief from the requirement that the new nonconforming use is a "neighborhood facility".

Existing Zoning Authority. The first floor of 301 12th Street, S.E. (Square 991, Lot 25) ("Property") has been operating as a retail grocery store since March 6, 1924, a period of in excess of seventy-five (75) years. Subsequent to the adoption of the Zoning Regulations in 1958, the nonconforming retail use continued. (See copies of certificates of occupancy in Exhibit "A".)

Existing and Intended Use. The Applicant requests the above-referenced relief to allow his tenant, David Berkowitz, to use the first floor of the Property as an artist studio for guitar making by one artist. An artist studio is permitted as a matter of right in a building located on an alley lot. (See Sec. 2507.5.) Most alley lots are located in the R-4 zone district which is the predominant zone district on Capitol Hill. An artist studio is first permitted as a matter of right in the SP zone. A grocery store is first permitted as a matter of right in the C-1 zone district.

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Applicant's most recent efforts to lease the nonconforming first floor retail space are detailed in the attached affidavit (See Exhibit "B"). Subsequently, Applicant leased the first floor to Mr. David Berkowitz.

Statement of Satisfaction of Burden of Proof for Zoning Relief Sought. The Applicant submits that, based upon (i) its Application and the materials submitted in conjunction therewith, (ii) the evidence to be presented at the public hearing and (iii) other evidence to be submitted subsequent hereto, it will satisfy and comply with the applicable legal standards and burdens of proof for a special exception and a variance.

Specifically, the Application submitted by Scott R. Gillis will satisfy the requirements of Section 3104.1 of the Zoning Regulations that require the special exception to "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps...." In addition, the Application will comply with the requirements of Section 2003 of the Zoning Regulations. This section requires that the proposed use "shall not adversely affect the present character or future development of the surrounding area" (2003.2), and "shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor and design and siting effects" (2003.3).

The proposed use is an artist studio for making guitars. The Applicant submits that this use is an exceptionally non-intrusive in a residential (R-4) zone and has considerably lesser impact than a grocery store which is first permitted in a commercial (C-1) zone. The artist typically crafts approximately fifteen (15) guitars per year. Only one or two persons visit the premises in a typical week. Customers learn of the artist's business by word of mouth and the Internet and only rarely visit the studio. The studio is soundproofed to eliminate or reduce the impact of any noise that might otherwise occur because of the occasional use of power tools. Any odor is minuscule and is filtered. Deliveries of supplies occur approximately once a month and are therefore minimal. Moreover, there will be no exterior signage advertising the studio. Therefore, it is not anticipated that the normal day-to-day activities that will occur in the artist studio will cause any noise that will be heard by the residents of nearby houses or that there will be any impact on traffic or parking. As a result, such use will not "become

objectionable to adjoining and nearby property because of noise, odor, traffic, parking and loading, or otherwise objectionable conditions" and "will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps....". (See comparison chart, Exhibit "C").

With regard to the owner's request for an area variance from the requirement that the new nonconforming use be a "neighborhood facility", the Application submitted by Scott R. Gillis will satisfy the requirements of Section 3103.2 of the Zoning Regulations.

Although the artist's guitars are available to residents in the immediate vicinity of the premises, the artist - because he sells only fifteen (15) guitars in a typical year - must rely on customers from outside of the immediate neighborhood for his livelihood. Thus, the artist's studio is not technically a "neighborhood facility." The property has an "extraordinary or exceptional situation or condition" because of (a) its history as nonconforming use for over seventy-eight (78) years (i.e., since 1924) and (b) the unusual shape of the property. Given the zoning history of the property, the first floor of the property is uniquely designed and adapted for commercial, retail use. To the benefit of the neighborhood, the tenant, Mr. Berkowitz, intends to substitute a less intensive use for the nonconforming grocery store use currently allowed.

With regard to the second prong of the burden of proof, given the more intensive use allowed for a retail grocery store, granting the application for an artist studio will not be of substantial detriment to the public good or general character of the neighborhood. Moreover, the impacts of noise, traffic and parking will be nonexistent or extremely minimal. Furthermore, no external modifications are being made to the building so that the structure and design of the property will have no impact on the compatibility of the property to the neighboring properties and general neighborhood character. Because the first floor space was used as a grocery store for more than seventy-eight (78) years and has never been converted to residential, the cost to convert to the permitted residential use would be substantial.

Finally, under the third prong, while the nonconforming use will not be a neighborhood facility, an artist studio of the nature specified (i) could potentially serve neighborhood residents and (ii) is so unobtrusive a use that granting the application will be

"in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps."

Conclusion. For the reasons set forth above, Scott R. Gillis, by and through counsel, submits that its Application has satisfied (and will satisfy) all applicable zoning requirements and the requisite burden of proof and, therefore, should be granted.

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