Burden of Proof: Studio Theatre Variance and Special Exceptions – BZA :

Variance: (Minimum Depth of Rear Yard)

The subject premises consists of three pre-1958 buildings that "contribute" to the character of the "14th Street" historic district, each originally built for automobile-related purposes, the three- and four-story story buildings at 1501 and 1509 originally being for automobile sales and repair, the smaller one at 1507 being automobile repair only.

The existing building at 1501 14th Street is already in use as a "legitimate theatre," a "preferred use" under the prevailing Arts/ C-3-A zone district regulations. The existing theatre building is being joined with the two existing adjacent building to form a larger, single building on a single record lot (subdivision in process).

The existing theatre building (1501 14th Street) and the one adjacent to it (1507 14th Street) occupy 100 % of the Assessment and Taxation ("A & T") lots on which they are located (lots 830 and 834 respectively). The third building (1509 14th Street, A & T lot 835) occupies all but 491 square feet of its lot. Combined, the lots total 17,325 square feet.

The proposal includes an relatively small addition that would occupy the remaining 491 square feet, under 3 percent of the total land area. The resulting project would then occupy 100.0 % of the lot, as already allowed in the zone district's prevailing lot occupancy provisions. As noted below, lot occupancy could increase to 99.0 % as a matter of right; the applicant seeks approval for a program under which the lot would be fully occupied but needs no "lot occupancy" relief for this to occur.

The relief needed is from the requirements to provide a rear yard of specified minimum depth. None of the three existing buildings are situated on their respective lots in a manner that complies with the requirement to provide a rear yard of specified minimum depth across the entire width of the rear lot line, a provision that operates independently of those relating to lot occupancy.

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The single, consolidated building will be located on a corner lot when the subdivision is completed. Owners of buildings on corner lots may elect any frontage along an abutting public street. Once the frontage is determined for these purposes, the side lot lines are those extending from the front lot line to the rear, and the rear lot line is the line connecting the two side lot lines at their furthest points.

Owner elects to declare the frontage of the consolidated property to be that along P Street for zoning purposes. Thus the rear lot line for the combined building on the record lot becomes the same as the 105.0 foot northern lot line of A & T lot 835.

The existing premises at 1501 is likewise already located on a corner lot. Thus, it can also be interpreted as "fronting" either 14th Street or P Street. Whichever frontage is considered, its three stories fully occupy the entire lot and no portion of either hypothetical "rear" satisfies the corresponding rear yard requirement. The Zoning Regulations require that this depth be provided across the full width of the rear of the property.

BZA
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Exhibit No. 12

Board of Zoning Adjustment
District of Columbia
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The premises at 1507 does not comply with the requirement to provide a rear yard of specified minimum depth relative to its pre-existing 14th Street frontage.

Likewise, the premises at 1509 does not comply with the requirement to provide a rear yard of specified minimum depth relative to its pre-existing 14th Street frontage. The unoccupied part of its existing A & T lot (835), and the proposed record lot, consists of a rectangular shaped area of 491 square feet in the northeastern corner of the lot. The rectangle measures 14.6 east-west by 33.6 feet north-south, that longer dimension abutting the public alley.

The roof of what is now 1509 is flat, sloping from west to east. The minimum depth of rear yard required for the resulting consolidated building before any addition is provided is determined by establishing the height of the rear of the building at its middle as it now exists, namely the mid-point between its height from grade at 14th Street, **61.1** feet, and its height from grade at the eastern limit of its four story mass, **58.1** feet. Thus, the height at mid-point is **59.6** feet. From that, the minimum is established at the rate of 2½ inches per foot of that mid-point height or twelve feet, whichever is more. In this case, the minimum rear yard required for that height is thus **12.0** feet. The existing four-story building is built flush to the property line along 82.5 feet of the lot's overall width of 105.0 feet.

The existing building also has a one-story element located east of the four main stories. The latter is "L" shaped, extending an additional 7.9 feet east from the main four story building along the northern property line and extending the full 22.5 feet along the southern property line. [1]

Nearly two-thirds of the 491 square foot area could be occupied as a matter of right. The only area required to remain open without a variance is the northernmost **12.0** feet of it. This would result in a small open court of that width covering the area between the alley and the existing one-story part of the building now existing there. Thus, as a matter of right, lot occupancy could already increase from 97.2 percent to 99.0 percent.

The applicant seeks approval to extend the existing non-conforming rear yard (providing none of the **12.0** feet of depth required) along the 14.6 feet remaining along the northern (rear) property line. The non-conforming portion of the rear yard is 82.5 feet (where four stories are built to the property line) plus the one story element (where an additional 7.9 feet is

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[1] A more aggressive interpretation would measure the height at 14th Street and the vastly lower height at the rear of the one-story portion of 1509 at its eastern extreme, where the height is approximately 16 feet. This results in a "mid-point" average that yields a rear yard requirement well below **12.0** feet when multiplied by 2½" per foot. However, that lesser algebraic requirement is trumped by the required absolute minimum depth of rear yard provided in the same regulations, namely 12.0 feet. Applicant does not pursue this alternative interpretation since it does not serve to further reduce the minimum depth of the required rear yard.

built to the property line) as a percentage of the lot's total width at the rear, 105.0 feet, namely 86.1 percent. The un-built portion represents just 13.9 percent of the width of the rear yard of the lot on which the existing portions of the "consolidated" building is located. Note, since the underlying zone permits occupancy of 100.0 percent of the lot, the addition does not create, "expand or extend" any other non-conforming aspect of the property within the limits of what is already built.

Being located in and contributing to the "14th Street" historic district, changes in the property can only occur if approved by the Historic Preservation Review Board. When originally proposed, the project included "scene shop" functions, where "sets" are built, in a location along the frontage of what is now 1507 14th Street on the second floor, with direct access on that level to other rooms where sets were to be finished. A protective barrier of some kind would have been installed to protect the 14th Street windows from the scene shop functions, and the area behind the windows would not have been "animated." The Historic Preservation Review Board requested that the project bring more life to the second floor to be seen from the adjacent street and sidewalk, activity giving a sense of the use to which the property was being put.

The plan was revised to extend a theatre lobby area into this area, and retain clear glass in the second story windows. The Historic Preservation Review Board approved that concept. As so revised, the plan required the scene shop to be relocated. The new location is at the rear of 1509 as a second story addition that covers the entire open area to the east of the existing building at that level, an area of 1,125 square feet, equivalent to the area dedicated to that function previously. This new part of the second floor covers the existing one-story portion of the original building, which itself already covers 634 square feet (leaving 491 sq. ft.) At present, areas above and beyond the one-story portions of 1509 constitute "open courts" just as will be the result when the roof over 1507 is raised to form a plane matching that of the second story roof of 1509 meeting the plane of the rear of the third and fourth stories of existing 1509 and the vestibule and mechanical areas to be built on those levels of 1507.

The applicant proposes to occupy the additional 491 square feet on the first level of 1509 to improve trash handling and storage, food preparation and storage, laundry facilities, and emergency egress from the fire-stairs that replace the former automobile elevator at the rear of 1509.

Taken together with the vertical relocation of the roof over the eastern portion of 1507 and the additions to the east of 1509, the result is a single "open court" that is 90.0 feet wide (north-south) by 22.5 feet in depth (east-west). This court satisfies the applicable zoning standards.

For reasons discussed below, applicant proposes to establish a roof structure to enclose mechanical cooling equipment needed for successful theatre operations, providing climate controlled air to lobby and other areas. This equipment serves separate "zones" than the main chiller, which is to be located in a major roof structure above what is now 1509 14th Street. See the discussion of the Special Exception below.

Practical Difficulty:

Thus, the **practical difficulty** arises from applicant's successful effort to animate the 14th Street frontage of the project at the request of the Historic Preservation Review Board while maintaining function space *on the same floor level* essential to the specific uses where sets and props would be fabricated and maintained.

No Detriment to Public Good:

The application as proposed does not diminish the ability of adjacent and abutting property owners to fully utilize and enjoy their properties, nor is the relief requested in conflict with public standards. The resulting development merely shifts the current non-conforming rear yard from the northern limit of A & T lot 830 to A & T lot 834, more than 86 percent of which is already non-conforming as to the standard involved.

Not be Inconsistent with the General Intent and Purpose of the Zoning Regulations and Map:

Legitimate theatres are among the most favored "preferred uses" in the Arts overlay. The general intent is to foster the development of legitimate theatres in the Arts overlay area. This application is fully consistent, not merely "not inconsistent."

Special Exception (Roof Structure)

Theaters require substantial cooling systems, and these must be arranged such that cooled air is developed outside of the immediate area of the theatre since the noise of the mechanical equipment would otherwise interfere with live performances and in which human voices must carry within a large space to hundreds of patrons without amplification and be heard, whether speaking loudly or softly, in keeping with the character and setting each production. Two of the project's original buildings have existing cooling systems and exterior chillers. The proposed project requires *more than 100 tons of additional* cooling power for a new theatre and new lobby and atrium areas, and new service areas such as those where sets and costumes are made and finished, with separate systems for each. The original buildings have roofs at four different levels. Another existing chiller (situated on the roof of the existing one story rear portion of 1509) exceeds four feet in height but is not screened. This unsightly, pre-existing, non-complying "grandfathered" condition will be eliminated.

The proposed project will have three roof levels: that over 1501's third floor; that over 1507 and 1509's combined "four story and atrium" mass, and that over the new two story portion along the alley at the eastern side of 1507 and 1509, the proposed "open court".

One existing elevator core (1509) is converted to a fire stair, thus no longer clearly qualifying as an additional allowed area for a roof structure for mechanical equipment. Moreover the roof on the top of that portion of the building slopes. The project's intent is to create a clean, horizontal line just high enough to hide the equipment to be located within it, including a 70-ton chiller and a 20-ton chiller.

The sloped roof dictates that the height of the walls of the roof structure be uneven if its top edge is to become a true horizontal (and not be parallel to the slope of this roof). Moreover, since the equipment it will contain is not as high as the existing (and non-complying) roof structure, the overall roof structure will be less massive and less visible from nearby high-rise apartments if built to a lower height and less visually disrupting if built to a pure horizontal plane (resulting in walls of uneven height).

Applicant proposes to build the roof structure on the roof of the fourth story of 1509 to a height no greater than eleven feet up from the point where it would meet the existing roof structure on its north face, and each wall would remain at least eleven feet from the adjacent building walls (west, north, and east). Its height would not be raised to the height of the existing, non-complying penthouse simply to comply with the uniformity requirement, resulting in a roof structure about two feet less tall than it would otherwise be. With lower walls, the roof structure may be located closer to the outer edges of the roof of the building on which it sits (west, north, and east).

A third penthouse is proposed to be located over the two story east side of the project, where additional essential cooling equipment not able to be accommodated on the roof of 1509 will, of necessity, be located. This penthouse will be masonry, with openings for air intake and drainage,

consistent with the materials and architectural features along the eastern face of the third floor of 1507 and 1509, and be of equal height.

This roof structure will comply with setback requirements from both northern and eastern edges of the roof of the portion of the building on which it would be located. Applicant seeks approval for same and will provide more detailed information at the time of the hearing. Height of screen wall depicted in drawings that accompany application shows the maximum height resulting from a measurement point along the eastern edge of the roof, should that full height be needed to minimize the level of sound that would emerge from the chillers when operating. Applicant will seek approval for the lowest height that will (a) screen the equipment and (b) dampen sounds the equipment generates when operating.

This roof structure will contain as many as three chillers, each of which requires "free and clear" access around its perimeter that cannot be simultaneously screened and contained within the depth of the roof between the alley and the plane of the eastern wall of the building's third and fourth floors.

Granting of this special exception would have no impact on adjacent properties and, of course, contributes in no way to additional traffic or other adverse external effect.

Special Exception (Display Window)

The requirement to establish and maintain a minimum percentage of surface area at the ground level for display windows and entrances reflects the intent of the Arts overlay to foster retail presence on specified pedestrian streets. The provisions neglected to account for the inherent conflict between such a requirement for retail uses as contrasted with the only other non-residential preferred use, "legitimate theatre."

The existing theatre's (1501's) windows had been bricked up prior to the adoption of the Arts Overlay rules and are now covered by faces painted on thin steel panels set within the historic window opening. Applicant proposes to replace these with backlit glass panels continuing the same emblems – at the suggestion of the Logan Circle Community Association.

Applicant proposes to have a similar, but not identical, panel replace the existing display window at 1509, and, immediately "behind" that to install a fire and soundproof wall essential to theatrical productions that will take place in the new theatre being created in that space. Applicant does not operate any retail functions and believes a "display window" in the only area remaining misleads passing pedestrian and motorists as to the functions of the building. Moreover, even if the entire area "available" at 1509 were utilized for display window, it, when added to areas used for entrances along the balance of the 14th Street frontage, would not be sufficient to satisfy the overlay's requirement for this to be at least 50.0 percent of the total surface area at ground level. Thus, relief would have to be sought from the minimum percentage requirement in any event.

Granting of this special exception would have no impact on adjacent properties and, of course, contributes in no way to additional traffic or other adverse external effect. Rather, it lets the theatre, a preferred use, operate as such instead of creating the misimpression that the building contains any retail functions.

Note that the opening for the current display window at 1509 would remain intact. Thus, should use of the property as a theatre cease at some later point in time, the a display window could readily be re-established. Owner is prepared to accept a condition that this special exception be limited to the duration of theatre use for the portion of the property associated with A & T lot 835 or the zoning requirement, whichever ends first.