GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

RECEIVED
D.C. OFFICE OF PLANNING
2004 FEB -3 AM 9:24

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE January 13, 2004

SUBJECT: BZA Application **17110**
65 Eye Street, S.W. – Millennium Arts Center

APPLICATION

Application of Millennium Arts Center, pursuant to 11 DCMR §3103.2, for a variance from the use provisions under subsection 330.5, to operate an Arts Center (artist studios, art exhibitions, and art education) in the former Randall Junior High School building in the R-4 District at premises 65 I Street, S.W. (Square S-643, Lot 801).

The applicant is requesting this relief to facilitate the grant of a certificate of occupancy.

SUMMARY RECOMMENDATION

The Office of Planning **recommends denial** of the use variance.

SITE AND AREA DESCRIPTION

The subject property is located in Square S-643 in the southwest quadrant of the District. The square is bound by H Street to the north, I Street to the south, South Capitol Street to the east and South Capitol Terrace to the west. The property is improved with a series of interconnected brick buildings formerly known as Randall Junior High School on approximately 2.7 acres of land. Zoned R-4, it abuts the R-5-A, C-3-A and C-3-C Zone Districts to the west and south of the property.

BZA
Case No. 17110
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO. 17110
EXHIBIT NO. 25

BACKGROUND

The District of Columbia Public Schools (DCPS) owns the property, which was operated as a school for approximately 100 years. The applicant, Millennium Arts Center (MAC), a lessee and with authority of DCPS, is seeking to comply with DCRA regulations for a certificate of occupancy for the existing arts center. MAC has been in operation at this location since January 2000, but has not obtained a certificate of occupancy.

The Zoning Administrator has denied the applicant's request for the certificate of occupancy because the use is not permitted in the R-4 Zone District. MAC entered into a ten-year lease agreement with DCPS, with option to purchase the property at a specified price. Currently, the Center leases 80% of the building for its operation, with 20% sub-leased to the District for operation of a homeless shelter in the former gymnasium. The lease is specific on the use of the building as being limited to a center supporting the arts and related non-profit organizations in Washington, D.C.
The use variance is needed for the Center to continue its operation at the former Randall Junior High School building, since this is not a permitted by-right or special exception use in the R-4 Zone District.

ZONING REQUIREMENTS and ANALYSIS

The subject property is zoned R-4 and is subject to the provisions of §330 of the Zoning Regulations. For a use variance to be granted, the applicant has to meet the burden of proof requirements outlined in 11 DCMR §3103.2 for relief from the provisions of §330 as follows:

(a) *The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;*

The component uses that make up an arts center as defined by the Zoning Regulations under Section 199.1 include, artist studio, art gallery, art school, artist housing, concert hall, dinner theater, legitimate theater, movie theater or museum, operated under single management in part or all of a group of buildings within the same square. The applicant seeks the variance to legitimize the existing uses of the center including artists studios, art exhibition and art education space. However, these uses separately or in combination are not prescribed under the R-4 Zoning Regulations.

The property is not a designated historic structure and has no unique characteristics or exceptional conditions, which would make it impossible to accommodate any of the uses, prescribed in §§ 330 and 332 of the Zoning Regulations.

The property is not unique in shape or size to prevent the District, as property owner, from converting the use of the structure from a former school to any of the by-right or special exception uses contemplated in the Zoning Regulations. The property has a

comparatively rectilinear shape and large (2.7 acres) lot area which could accommodate a school, residential uses, and other institutional uses pertinent to this Zone District.

(b) *By reason of the aforementioned unique and exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.*

The applicant has informed OP that as a tenant, they were unaware that this use was not a permitted use according to the Zoning Regulations. MAC assumed that restrictions specified in the lease agreement were legally permissible and there was a hardship on its budget to conduct zoning research before the lease became effective. In addition, twenty-two (22) artists who now occupy space at the Center would have limited options for suitable studio space.

OP contends that DCPS's lease terms have no bearing on exceptional conditions of the property. Legal counsel for the property owner submitted a written statement specifically stating that there is no exceptional and undue hardship to the District of Columbia, as property owner, due to the property's current zoning (Attachment 1).

The applicant has stated that they are situated in a mixed-use setting with more intensive zone districts on three sides, including C-3-A and C-3-C zoning along I Street in front of the building, and R-5-A and R-5-C zoning to the west and southwest. While it may be argued that the uniqueness of the location is attributable to the character of uses surrounding the property, the property remains suitable for its permitted uses[1]. The applicant has not provided evidence that the R-4 Zone provisions pose practical difficulties and undue hardship to the property owner.

OP believes that in this instance, no situation has arisen where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.

(c) *The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*

Since the applicant has not presented evidence of uniqueness or of undue hardship to the owner of the property (DCPS), there is no consideration whether the requested use variance would impair the zone plan and be especially contrary to the R-4 zone and the standard for variances.

[1] Palmer v Board of Zoning Adjustment, 287 A2d 535 (D.C. App. 1972)

COMMUNITY COMMENTS

OP has no information to date regarding community comments, including reports from ANC6D or other community groups.

CONCLUSION

The Office of Planning concludes that the applicant has not met the burden of proof, pursuant to 11 DCMR 3103.2, for the grant of a use variance to permit the Millennium Arts Center continued use of the DCPS property, formerly known as Randall Junior High School.

A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. The applicant has failed to provide substantial arguments in support of this criterion. As noted above, legal counsel for the property owner has submitted that there is no exceptional and undue hardship to the District of Columbia, as property owner, due to the property's current zoning. Therefore, the request cannot be granted without substantially impairing the intent, purpose, and integrity of the Zoning Regulations and the Office of Planning recommends that the Board of Zoning Adjustment deny the variance request.

Attachment

1. **Letter from Corporation Counsel, January 12, 2004.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CORPORATION COUNSEL

Commercial Division



January 12, 2004

RECEIVED
D.C. OFFICE OF ZONING
2004 JAN 12 PM 1:59

Geoffrey Griffis, Chairman
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W., Suite 210
Washington, DC 20001

Re: BZA Application No. 17110 – Millennium Arts Center, Inc. – 65 Eye Street, S.W.

Dear Mr. Griffis:

This Office represents the District of Columbia with respect to the ownership and management of the subject property which is titled in the District of Columbia.

The purpose of this letter is to clarify the District's letter of authorization dated October 24, 2003, incorporated into the application filed by the Millennium Arts Center, Inc. ("MAC") on November 13, 2003. That letter was intended merely to permit MAC to file an application for a zoning variance which it was required to obtain pursuant to a February 2000 lease between it and the District of Columbia Public Schools. Because only the owner of the property is permitted to apply for a zoning variance, the Office of Property Management agreed to authorize MAC to act on behalf of the owner in applying for the variance.

That authorization should not, however, be construed as permitting MAC to make any representations on behalf of the District as to whether the inability of the lessee to use the premises for its intended purposes results in "exceptional and undue hardship upon the owner" of the property – the District of Columbia – within the meaning of D.C. Official Code § 6-641.07(g)(3) (2001). In fact, there is no hardship whatsoever to the District, as owner of the property, as a result of the property's current zoning.

I trust the foregoing will be helpful in clarifying to the Board of Zoning Adjustment the position of the owner of the property. Should you have any questions, please contact the undersigned.

Sincerely,

ROBERT J. SPAGNOLETTI
Corporation Counsel

Emily K. Morris

By: EMILY K. MORRIS
Assistant Corporation Counsel

cc: Cynthia Giordano, Esq.
Millennium Arts Center, Inc.