STATEMENT IN SUPPORT OF APPLICATION BY THE MILLENNIUM ARTS CENTER FOR A VARIANCE FOR 65 EYE STREET, S.W.
November 13, 2003

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I. Nature of Relief Sought

The applicant, the Millennium Arts Center ("MAC," the "Center"), is a nonprofit organization that provides space for local artists' studios, art exhibits, and arts education for the general public. The subject application seeks a use variance to allow continued arts use of 65 Eye Street, N.W., Square S-643, Lot 801 (the "subject property"). MAC leases the subject property from the District of Columbia Public Schools. It is zoned R-4.

II. Description and History of Subject Property

The subject property consists of Lot 801 in Square S-643 located in the Southwest quadrant of the District of Columbia. The lot contains 115,723 square feet of land (2.7 acres) in a rectangular configuration. The property is improved with the former Randall Junior High School, which contains approximately 142,000 square feet in several buildings, which are inter-connected.

The multi-level, former school building was constructed in phases between 1876 and 1968. (See the plat and floor plans attached hereto as *Exhibit C.*) The original 1876 school forms the center of the main façade along Eye Street. Additional wings to the west, north and east were added later. The Millennium Arts Center ("MAC") currently occupies approximately 80% of the subject improvements or 114,000 square feet of the total space in the building.

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The subject property is owned by the District of Columbia Public Schools ("DCPS") and has been for more than 100 years. After school use of the property was discontinued, the property was occupied (commencing in approximately 1983) by the District of Columbia Department of Health and Human Services. In March 1988, the gymnasium was devoted to use as a homeless shelter operated by Catholic Charities, Inc. In January 2000, the property was leased by the District of Columbia in its entirety to MAC for a period of ten years. (A copy of the lease is attached hereto as *Exhibit B*). The lease provided that the District would continue to operate a homeless shelter in the gymnasium at fair market rent.

The homeless shelter has continued to occupy approximately 14,000 share feet of space in the gymnasium since the lease was executed. However, the City has paid no rent to MAC for the homeless shelter, although the lease requires it. Correspondingly, MAC did not pay rent to the City until February of this year when the City threatened to evict MAC for nonpayment of rent.

For the term of the lease, use of the subject property by MAC was limited to "a center supporting the arts and related non-profit organizations in Washington, D.C." The lease also gives MAC the right to purchase the property for a specified price. MAC was under the mistaken impression that the lease from the City constituted all of the legal authorization needed to occupy the building with an arts center use. As a result, MAC has been occupying the subject property without a Certificate of Occupancy. When MAC applied for a Certificate of Occupancy within the past few months, the Zoning Administrator denied the application. The purpose of this variance request is to correct this situation and to permit MAC to obtain a Certificate of Occupancy for its continued use of the building.

III. Site Zoning

The subject property is located within an R-4 zone district, as depicted on the Zoning and Site Location Map and the map of the property from the *Sanborn Building and Property Atlas* attached hereto as *Exhibit A*. The R-4 District is intended to encourage development of row houses and flats, and it also allows conversions of pre-1958 buildings to apartments subject to strict density limitations. Other uses permitted in this zone by right include detached and semi-detached houses; youth residential care facilities, health care facilities, emergency shelters and child development centers (all subject to size limitations); private clubs; and museums.

The proposed arts center use is not permitted by right in the R-4 zone. The Zoning Regulations do not specify in which zone district an arts center is first permitted although Arts Center is specifically listed as a preferred use in the Uptown Arts Overlay District that applies to CR, C-2-B and C-3-A zoned properties in the vicinity of 14th and U Streets. It is also a preferred use in the Downtown Development District. However, since many of the component uses that make up an arts center (i.e., artist studio, art gallery) are first permitted in the SP District, presumably an arts center is allowed as of right in SP as well. Artists' studios are first permitted in the SP District as a matter-of-right. Section 501.3 indicates that sales of art work produced in such studios may be permitted in the studio and that the artist may teach art in the studio. Art galleries are first permitted in the R-5 District as a special exception (and in SP as a matter-of-right).

The Zoning Regulations (Section 199) provide the following relevant definitions for "art center," "art gallery," and "artist studio."

> **Art center** – a multifunctional arts use that: (a) comprises three (3) or more distinct arts and arts-related uses as specified in § 1908; (b) where at least one of

the uses must be an art gallery, art school, artist housing, artist studio, concert hall, dinner theater, legitimate theater, movie theater, or museum; (c) is operated in a unified way under single management; and (d) occupies part or all of a building or a group of buildings within the same square. (39 DCR 8328)

Art gallery – an establishment that derives more than fifty percent (50%) of its income from the display and sale of objects of art.

Artist studio – a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation in the following:

(a) The fine arts, including but not limited to, painting, printmaking, or sculpturing;

b) The performing and visual arts, including but not limited to, dance, choreography, photography, or filmmaking;

(c) Ceramics; or

(d) The composition of music.

Non-profit organization use is also permitted in the R-4 District under certain circumstances with the approval of the Board of Zoning Adjustment. More specifically, Section 217 of the Zoning Regulations permits nonprofit organizations to locate in residential zones with a special exception in instances in which the property is a designated historic property with a

gross floor area of 10,000 square feet or more.[1] The purpose of this provision is to encourage the adaptive reuse of such properties, which are often too large for residential use.

The Zoning Commission is currently considering an amendment to Section 217 that would extend its application to vacated public school buildings (Z.C. Case No. 03-09). At the request of the Zoning Commission, OP is currently formulating a recommendation to the Commission that would further refine and define the specific types of nonprofit uses that would be permitted with this special exception.

IV. Current and Proposed Use of the Subject Property

MAC is a nonprofit organization that operates an arts center on the subject property. The Center consists primarily of artist studio space that is subleased to local artists. Currently, 22 local artists maintain studio space on the subject premises. Many of these artists sell their art work out of their studios. The Center also has space that is devoted to art exhibitions and art education programs that are open to the general public.

Affordable space for artists in the City is difficult to find. The amount of space available for use by artists has declined over the last few decades and continues to diminish. The displacement of artists typically results from rising rental rates and rising property values. Low cost space devoted to arts uses along 7th Street in the Downtown and in the 14th and U Streets corridor has been reclaimed for more profitable commercial and residential development. The Millennium Arts Center fulfills an important need at this time.

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[1] Although the older parts of the former Randall School complex are probably eligible for historic designation, such designation has not yet occurred, so that the subject property is not eligible for the special exception under existing Section 217.

The Center has long-term plans to occupy the entirety of the subject property with additional artist studios as well as accessory art galleries and a café. Long-term plans for the Center also include arts rehearsal and performance space as well as apartments for visiting artists. The requested variance, however, is solely for the purpose of allowing MAC to continue to occupy the space it currently occupies and to legalize the existing uses: artist studios, art exhibition, and art education space. Any larger plans for the Center will be submitted for review by the Zoning Commission under the PUD or rezoning process.

V. Subject Application Meets Variance Test

The requested variance requires a demonstration that (1) some exceptional or unique condition of the property creates a practical difficulty for the owner in using or developing the property. The Board must also find (2) that the requested variances can be granted without substantial detriment to the public good and (3) without substantially impairing the purpose and integrity of the zone plan. As discussed in more detail below, the subject application meets all of these tests.

A. An exceptional or unique condition creates a practical difficulty in using the property. The subject property exhibits a number of exceptional conditions that give rise to substantial practical difficulty and hardship in the use of the subject property. First and foremost is the extraordinary fact that DCPS leased the subject property to MAC with a restriction limiting its use to an arts center. MAC understandingly assumed that since the City had placed this restriction on the property that such use was legally permissible. MAC operates on a very limited budget and does not have the funds to conduct the type of legal/zoning due diligence that one would expect from other types of users. MAC moved into the subject property in February 2000 and has struggled to establish a successful arts center. Currently, 22 artists

maintain studio space at the Center – most of these artists have few other options for suitable studio space. Further, the opportunity to share such space with a broad cross-section of other artists is a unique situation in the District of Columbia.

The property is also exceptional in its large size, historic quality and the fact that the City maintains a substantial homeless shelter on the premises. Very few other uses would tolerate or successfully cohabit with a homeless shelter.

The large bulk and lot occupancy of the existing buildings constitute an obstacle to the more normal uses allowed in the R-4 District. It is not in the best interests of the District of Columbia to demolish these large, well-constructed buildings because of their value as available space and because of their potential as historic buildings.

B. <u>The requested relief can be granted without substantial detriment to the public good</u>. MAC would suffer a severe hardship if a variance to continue the existing arts center use is not granted. Under the terms of its lease with DCPS no other use of the property is permitted. Further, the 22 artists who currently maintain studio space at the Center would suffer a hardship as well. Finally, the community and the broader public who patronize the Center would suffer with the loss of the Center. The community views the homeless shelter as a destabilizing force that is somewhat mitigated by the existence of MAC within the same building. If MAC is evicted, the shelter would exert more influence on the block and could possibly expand its presence on the site.

The existing arts center use was established using funds of the D.C. Department of Housing and Community Development ("DHCD") and the U.S. Department of Housing and Urban Development because of the public benefits involved in the arts use. Extensive community participation in that decision was solicited by DHCD, and the arts center continues to

enjoy strong neighborhood support. The use keeps the large, former school complex from being vacant and potentially a derelict building imposing adverse effects on the surrounding neighborhood, e.g., higher crime rate, visual blight, adverse effect on property values.

The existing arts center use generates relatively little vehicular traffic and no perceptive noise. Accordingly, there are no apparent adverse effects on the public or on neighbors, only public benefits.

C. **The requested relief can be granted without substantial impairment of the zone plan.** As indicated above, MAC is a positive use that is supported by the community. Its continued existence will not have an adverse impact. The zone plan would not be adversely impacted either. In fact, the Zoning Commission is currently considering an amendment to the Zoning Regulations that would permit the proposed variance use with a special exception. As a relatively quiet use that generates little traffic and keeps large buildings from being vacant, this use is highly compatible with its residential zoning. It should be noted as well that MAC is situated in a mixed-use setting with more intensive zone districts on three sides. Directly to the south across Eye Street the zoning is C-3-A and C-3-C. The high-rise Best Western Motel is located in the C-3-C zone. R-5-A and R-5-C zoning are located to the southwest and west. Adjacent development includes three churches, a health clinic as well as more intensive commercial uses nearby.

V. Conclusion

For all of the foregoing reasons, the Applicants respectfully request that the Board grant the requested use variance.

Sincerely,
ARNOLD & PORTER

Cynthia A. Giordano

Nathan W. Gross, AICP

Attachments:

Exhibit A	Zoning and Site Location Map
Exhibit B	Existing Lease
Exhibit C	Plat and Floor Plans