GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17295 of the Good Samaritan Foundation, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements of § 771, and a variance from the parking requirements of § 2101.1, to allow the interior renovation of an existing building and conversion of the space into a community center and after-school mentoring program in the C-2-A District at premises 2405 Martin Luther King, Jr. Avenue, S.E. (Square 5789, Lot 808).

HEARING DATE: March 29, 2005
DECISION DATE: March 29, 2005

DECISION AND ORDER

This application was submitted on January 11, 2005 by The Good Samaritan Foundation, ("Applicant"), the owner of the property which is the subject of this application ("subject property.") This self-certified application requested two area variances, one from the maximum permitted non-residential floor area ratio ("FAR") and one from the minimum number of off-street parking spaces required. The variances were requested in order to allow the Applicant to convert an existing building into a community center with an after-school program for high school students.

The Board of Zoning Adjustment ("BZA" or "Board") held a public hearing on the application on March 29, 2005 and by a vote of 5-0-0 decided to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated January 13, 2005, the Office of Zoning ("OZ") gave notice of the filing of the application to the Office of Planning ("OP"), the District Department of Transportation, Advisory Neighborhood Commission ("ANC") 8C, the ANC within which the subject property is located, Single Member District/ANC 8C01, and the Council Member for Ward 8. Pursuant to 11 DCMR § 3113..13, OZ published notice of the public hearing in the *District of Columbia Register*, and on January 24, 2005, sent such notice to the Applicant, all property owners within 200 feet of the subject property, and ANC 8C.

Requests for Party Status. ANC 8C was automatically a party to this proceeding. There were no other requests for party status.

BZA
CASE No. 17295
EXHIBIT No. 33

Board of Zoning Adjustment
District of Columbia
CASE NO. 17295
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Government Reports. On March 22, 2005, the Office of Planning submitted a report of the same date recommending approval of the application. OP analyzed the application with respect to the three prongs of the variance test and concluded that both the FAR and the parking variances should be granted.

There were no other government reports filed in this case.

ANC Report. ANC 8C submitted a letter dated March 16, 2005, stating that, on that date, during a special community meeting, with a quorum present, the ANC had considered this application. The ANC voted to approve the interior conversion and renovation of the building on the subject property, and therefore the FAR variance. The ANC, however, did not approve the parking variance, stating that the Applicant must provide the ANC with evidence that it has at least five "permanent" parking spaces before the ANC could approve the parking variance.

FINDINGS OF FACT

1. The subject property is located in a C-2-A zone district at 2405 Martin Luther King, Jr. Avenue, S.E., near the intersection with Talbert Street, S.E.

2. The subject property has a lot area of approximately 6,500 square feet.

3. The property is developed with a 2-story building constructed in 1947 as the Carver Theater. The building was later acquired by the Smithsonian Institution and used as the African-American Museum, but has been vacant since 1984, is now in a deteriorated condition, and is in serious need of repairs.

4. Immediately adjacent to the property is a take-out restaurant, a vacant lot, and a PEPCO substation. The Savoy Elementary School is located immediately to the west and north of the property, separated by a dead-end alley on the north side. Located one block from the property is the Thurgood Marshall Charter School, a high school which is currently under construction.

5. The Anacostia Metro Station is approximately one and one-half blocks from the property and there is regular Metrobus service along Martin Luther King, Jr. Avenue.

6. The Applicant proposes to convert the former theater building into its headquarters offices and a community center. The community center will provide adult career training and other services to people in the community during the daytime and weekend hours. The center will also provide a safe, structured after-school program open to approximately 100 high school

students four days a week during the school year and five days a week during the summer.

7. The hours of operation of the after-school program will be from 3:30 p.m. to 6:00 p.m., with an extension to 8:00 p.m. on Wednesday evenings.

8. The Applicant relies on volunteers and currently has 6 employees, consisting of one intern and 5 full-time employees. In the near future, the Applicant hopes to hire 5 more employees, 2 of whom will be part-time.

9. The Applicant owns a 15-passenger van which it uses to pick up the high school students at various locations and transport them to its current after-school program, located at 1317 8th Street, N.W. The Applicant intends to continue to use the van to service the new after-school program on the subject property.

10. The van is kept at a Metropolitan Police facility near the location of the current after-school program, and the Applicant intends to keep it at such a facility near the subject property once the new after-school program is operational.

11. Only 10% of the families of the 65 students currently participating in the Applicant's after-school program have access to an automobile and only 2 of the Applicant's 6 current employees drive to work. The vast majority of volunteers will arrive at the subject property by metro.

12. Because the building on the subject property was originally built as a theater, it is open from the floor of the first story to the ceiling of the second story, with only a mezzanine, but no intervening second floor.

13. The current FAR of the building is 1.3, within the 1.5 non-residential FAR permitted in the C-2-A zone. 11 DCMR § 771.2.

14. The Applicant intends to insert a second floor into the building to create more usable space, thereby increasing the non-residential FAR to 1.67, or 11% more than permitted.

15. The increase in FAR, however, will not increase the building's footprint, and therefore will not increase the building's lot occupancy, which is currently 89%.

16. Although the lot occupancy is 89% and 100 % lot occupancy is permitted, there is no area large enough in the rear of the building to accommodate any

parking spaces. There is an area in front of the building large enough for only one small space, but this area is outside the building restriction line.

17. Although the Zoning Regulations would require 30 off-street parking spaces for the subject building, it appears that none of the building's former uses provided any on-site parking and it is not now economically or structurally feasible for the Applicant to construct below-grade parking spaces on the property. *See,* 11 DCMR § 2101.1.

18. The Applicant has the permission of the principal of the nearby Savoy Elementary School for its employees to use between 2 and 5 off-street parking spaces located on the School property and the Applicant is also working with the nearby Bethlehem Church in order to secure more parking.

19. The Applicant does not propose to hold any large functions on the subject property, and the largest room that will result from the interior renovation being undertaken will accommodate a maximum of only 20 to 30 persons.

CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations in order to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of any Zoning Regulation would "result in particular and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment,* 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(G)(3), 11 DCMR § 3103.2.

An applicant for an area variance must make the lesser showing of "practical difficulties," as opposed to the more difficult showing of "undue hardship," which applies in use variance cases. *Palmer v. D.C. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case, therefore, had to make three showings: exceptional condition of the property, that such exceptional condition results in "practical difficulties" to the Applicant, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The building on the subject property was built as a theater and is two stories in height, but has no second floor. This unusual configuration does not lend itself to many uses, other than a theater, and may explain why this building has been vacant for 21 years. The Applicant intends to stabilize, repair, and renovate the building, including adding a second floor to create a much more practical configuration and considerably more usable space. The addition of the second floor, however, creates the need for a FAR variance as the Applicant's non-residential FAR becomes 1.67, slightly above the maximum permitted non-residential FAR of 1.5. Without the small increase in FAR, the owner would encounter severe practical difficulties in using the property as a community service center. In fact, use of the property as a community center is only feasible with the FAR variance. The owner can only operate the community service center on the property by adding a second floor. Without that additional space, there would be insufficient training and study space for the students and community residents. In light of the existing conditions of the structure – location of the stairs, entrance, plumbing, heating and cooling units, reconfigurations are limited, but in any event, any possible reconfiguration would increase the FAR and require variance relief.

The siting of the building on the property is also exceptional. Although it does not fully occupy the lot, it does not leave any open area suitable for off-street parking spaces. There are two small open spaces in the rear of the lot, but they are separated by the building itself, leaving inadequate area and access for the provision of parking. There is a small open space in front of the building, but it is encumbered by the building restriction line. Further, as the building is already standing, the Applicant cannot excavate and provide below-grade parking. Therefore there is no way the Applicant can provide the required 30 off-street parking spaces, if any, on the property.

Based on all the above, the Board concludes that the Applicant has met the first two prongs of the variance test. The building itself and its siting are exceptional and cause the Applicant practical difficulties in adhering strictly to the Zoning Regulations.

The Board also concludes that granting the variances will not impair the public good or the intent or integrity of the Zoning Regulations and Map. The Applicant's community center is a matter-of-right use in this C-2-A zone. With the variance, the FAR for this property will still be well under the maximum FAR permitted in the C-2-A zone district – 2.5 for an all residential building. Traffic and parking congestion in the neighborhood will not be significantly impacted by the Applicant's use or by its lack of off-street parking. The subject property is within easy walking distance of the Anacostia Metro Station and there is regular and continuous bus service along Martin Luther King, Jr. Avenue. At this point, only two of the Applicant's employees drive to work and they do so because they need to drive to various sites to mentor the students in the after-school program. It is anticipated that this number will decrease when the students and mentors are all located together at the new building. The Applicant has received permission from the principal of the Savoy Elementary School to make use of its parking lot and is also

working with the nearby Bethlehem Church to be permitted to use its lot. Further, the vast majority of the students in the Applicant's after-school program do not have access to a vehicle and arrive either on foot or by public transportation. Although some of the students and/or their families will presumably drive to the subject property, the Applicant will continue to use a 15-passenger van to transport students to the property, which should alleviate both parking and traffic impacts, if any.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgment of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning recommended granting the two variances and the Board agrees with its analysis and its recommendation.

ANC 8C recommended granting the FAR variance, but could not recommend granting the parking variance. The Board does not see, however, short of demolishing parts of the subject building, how the Applicant can provide any parking on the subject property, let alone 30 parking spaces. Further, the Applicant, as set forth above, has taken steps to mitigate any impact the granting of the parking variance may have. Although the Board understands that the ANC would like to see the Applicant provide "at least 5" parking spaces, this would still require a variance from the total number of spaces required (30). The Board, therefore, is not persuaded by the ANC's recommendation of denial of the parking variance.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for variances from the FAR requirement of § 771.2 and the parking requirement of § 2101.1. It is therefore **ORDERED** that the application be **GRANTED.**

VOTE: **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann, II and Gregory Jeffries to grant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each voting member has approved the issuance of this Order granting this application.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: SEP 14 2005

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPEAL NO. 17295

As Director of the Office of Zoning, I hereby certify and attest that on SEP 14 2005, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

JERRILY R. KRESS, FAIA
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TWR