

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of
Universalist National Memorial Church
1810 16th Street, N.W.
Square 177, Lot 802

BZA Application No. _____
ANC 2B09
Hearing Date: _____

STATEMENT OF THE APPLICANT

This Application is submitted by the Universalist National Memorial Church
("Applicant" or "UNMC"), by its attorneys, Greenstein DeLorme & Luchs, P.C., by John
Patrick Brown, Jr., Esquire and Kate M. Olson, Esquire.

I. NATURE OF RELIEF SOUGHT

The Application seeks approval by the Board of Zoning Adjustment ("**BZA**" or
"**Board**"), pursuant to 11 DCMR § 3103.2, for a variance from the use provisions for continued
theater performances on the basement level of a church ("**Church**") under § 350.4 in the DC/R-
5-B District at premises 1810 16th Street, NW ("**Property**") for a six (6) year period and to
increase the number of performances from 48 to 60 annually ("**Application**").

II. JURISDICTION OF THE BOARD

The BZA has jurisdiction to grant the requested variance pursuant to 11 DCMR § 3102.

III. BACKGROUND

A. ZONING HISTORY

The Property is located within the R-5-B Zone District and Dupont Circle Overlay
District, which does not allow for a theater use, nor is the use allowed as a special exception. See

Zone Map, Exhibit A. A theater use is first allowed in the mixed use commercial residential districts.

UNMC and the Spooky Action Theater Company (“**Theater**”) were unaware that the use was not permitted by zoning. The DC Zoning Administrator allowed for a temporary certificate of occupancy to be issued while an application for a variance, to allow for the use, was pursued. The theater use was authorized by the BZA in 2012, per BZA Order No. 18471 (the “**Order**”) (attached as Exhibit B), for a period of three (3) years. The Order granted approval, subject to ten (10) conditions. Once the BZA granted the use, the Theater obtained a Certificate of Occupancy for partial occupancy of the Church as a theater in the basement with 75 seats pursuant to the Order. See Exhibit C.

The Applicant remains in compliance with these conditions and requests that the BZA grant a variance for a longer period of time, preferably six (6) years.

B. THE PROPERTY AND ITS VICINITY

The Property is located on the northwest corner of 16th and S Streets, NW and a contributing structure within the Sixteenth Street Historic District. See Photos, Exhibit D. The Church Building (“**Building**”) was constructed in 1930 and has been the home of the Applicant since that time. The Building is in disrepair due to age and damage sustained by the 2011 earthquake. The Applicant has been working with the Historic Preservation Office to come up with a way to make the Building ADA compliant.

The Building contains a gross floor area of approximately 21,642. The frontages on S and 16th extend along the south and eastern boundaries of the lot, respectively. See Surveyor’s Plat, Exhibit E. The main entrance is off of 16th Street and there are several parking spaces provided

in the rear.¹ The rear of the Building abuts a 10 foot wide public alley. There are row dwellings adjacent to the north along 16th Street and across the alley to the west. The Building is readily accessible to a DC Metro Bus Stop right in front of the church (serving the S2 and S4 bus lines), 0.5 mile from the Dupont Circle Metro Station (Red Line) and 0.6 mile from the U Street Metro Station (Green and Yellow Lines).

C. BACKGROUND OF UNMC

UNMC is one of a kind in the nation's capital. It is a parish drawn diversely from the metropolitan Washington area, yet was built to serve as the national representative of the Universalist Church of America, which merged in 1961 with the American Unitarian Association to form the Unitarian Universalist Association of Congregations ("UUA"). UNMC is now a member of the congregation of the UUA, an association of more than one thousand congregations across the continent, bound together not by a common theology, but by a common covenant to seek truth in freedom. Each congregation within the UUA is self-governing and self-financing. This means that the Applicant relies on the generosity of members and friends of its organization and the revenue from the Theater lease as important sources of financing to maintain its open sense of community, historic building, and Christian message.

UNMC has a goal to grow as a spiritual community, both in numbers and in the depth of its faith experience. The Church is committed to revitalize its Building to make it a welcoming house of worship, study, fellowship, and service with the potential to contribute financially to the long-term viability of its congregation. Since UNMC does not have a full time staff (there are: two people who split the responsibilities as pastor, a director of music and an office and wedding

¹ Per Section 2120.3 of the Zoning Regulations, no parking is required for the theater use because the Church Building was determined to contribute to the Sixteenth Street Historic District.

coordinator) the Theater has been a critical steward of the Property, helping to monitor and maintain the Building.

D. DESCRIPTION OF THE USE OF THE CHURCH BASEMENT

This Application requests a variance to allow the continued use of a 7,400 square foot multipurpose room in the basement of the Church's Building to be used by the Theater for performances open to the general public. The multipurpose room, Perkins Hall, is also used by UNMC for meetings and other functions related to the UNMC's mission. See Floor Plans (Perkins Hall is labeled "Auditorium" on the Basement Plan), Exhibit F. The revenue brought in from the Theater allows UNMC to provide the community with much needed services such as a place to host: volunteers on Saturday morning for "Food for All", Alcoholic Anonymous Meetings, Leland Place Monthly Dinner Preparations and Dupont Circle Citizens Association Meetings.

Food for All is a non-profit organization that strives to provide emergency food to those who are in temporary situations of need. Its clients are generally elderly citizens, handicapped, or single mothers with young children. Each week Food For All accepts referrals from social workers who have been contacted by individuals, and in some cases, they receive calls directly from individuals in need. The majority of the food is obtained from the Capitol Area Food Bank, although they also receive donations from area supermarkets and farms. The operation is entirely volunteer operated, with the assistance of a federal grant. Each Saturday morning UNMC opens up Perkins Hall for Food For All volunteers to assemble food to be delivered to those in need.

The Applicant also invites both church members and non-members to join in the preparation of a monthly dinner for the men of Leland Place. The Leland Place Transitional

Housing Program, a facility of SOME (So Others Might Eat), describes itself as “a 13 week, live-in environment that is designed to help homeless men (who are addicted to drugs and alcohol and may also have a mental illness) become more self-reliant. The program participants are given the skills necessary to find and keep employment and to set goals for independent living while maintaining their sobriety.”

E. BACKGROUND OF THE THEATER

Spooky Action Theater is a dynamic, young theater company that has been recharging the audience's imaginative, intuitive, emotional core by linking artists and audience in a collaborative enterprise. The Theater was founded in 2004 by actor/director Richard Henrich, who sought to offer more plays that require audiences to participate with their imaginations. When originally founded, the Theater utilized rental space throughout the Washington, DC and Maryland area to hold productions.

In 2010, Spooky Action Theater reached an agreement with the Church to renovate the downstairs auditorium of the Church and create a multipurpose performance space. Work was completed in fall 2010. The result is an affordable, flexible, user-friendly performance space in a convenient, metro-accessible location. See Floor Plans, Exhibit F.

The Theater has gained growing recognition as a valued contributor to the DC performing arts community. Its productions are regularly reviewed in The Washington Post, Washington City Paper, and Maryland Theatre Guide, among others. The Theater's production of *Reckless* was recognized by DC Metro Theatre Arts.com as one of the best of 2012. DC Theatre Scene praised its recent production of *Kafka on the Shore*, adapted by Frank Galati from Haruki Murakami's novel, for its “beautiful and evocative images.” The Theater received its first Helen Hayes Awards © nominations for its Spring 2013 production of *Optimism! or Voltaire's*

Candide, a new adaptation by TJ Edwards, for outstanding ensemble and outstanding movement and the winter 2014 production of *The Wedding Dress*, by Nelson Rodrigues, received the honor of being named a Helen Hayes Awards recommended production and received rave reviews.

IV. COMPLIANCE WITH THE CONDITIONS

UNMC and the Theater are in compliance with the conditions as set out in BZA Order 18471 and as part of this Application requests that the term of the requested approval be for six (6) years (instead of 3) since the BZA process is expensive for the Applicant and the Theater to undertake so frequently. There will remain conditions that will act as a system of checks and balances prior to the next expiration of the Order.

Condition No. 1: *This approval shall be for a period of THREE (3) YEARS beginning on the date upon which the order became final.*

The Applicant is in compliance with this condition and requests the period of approval be for at least six (6) years.

Condition No. 2: *The total number of “performances” by the residential theater shall be limited to 48 per year. Performances shall include only formal theater-sponsored and benefitted scheduled events in which tickets are advertised and offered in advance to the general public. Performances shall not include Church-sponsored and benefitted events, theater auditions, rehearsals, and dress rehearsals which are not open to the public and tickets are not sold or offered, and other small scale and customary theater developmental activities, including free workshops, readings, open houses and other fundraising activities and other development activities for theater professionals and the public.*

The Applicant is in compliance with this condition and requests the number of performances be increased so that the theater is limited to 60 performances per year (instead of the current 48 performances).

Condition No. 3: *For outside residential theater performances, seating shall be limited to 75.*

The Applicant is in compliance with this condition.

Condition No. 4: *The current residential theater, Spooky Action Theater, or any subsequent residential theater, shall not sublet this space to other theaters or organizations. Such restriction shall be included in the lease between the Applicant and the residential theater.*

The Applicant is in compliance with this condition.

Condition No. 5: Public access to the theater for the general public, staff and performers shall be limited to the main entrance to the Church on 16th Street. Access from the alley shall be limited for ADA purposes and service activities.

The Applicant is in compliance with this condition.

Condition No. 6: For Friday and Saturday night performances, the residential theater shall seek to make arrangements for off-street parking for staff, performers, and patrons.

The Applicant is in compliance with this condition.

Condition No. 7: During the times of residential theater performances, the Applicant shall ensure that the gathering of people outside the premises of the Church during pre-performance waiting, intermissions, smoke-breaks, or post-performance socializing shall not disturb the peace, order or quiet of the residential neighborhood.

The Applicant is in compliance with this condition.

Condition No. 8: The Applicant shall remove any trash associated with the residential theater performances no later than the day after the performance.

The Applicant is in compliance with this condition.

Condition No. 9: The Church shall meet with the ANC annually to discuss any concerns and the need to implement any new mitigation measures.

The Applicant is in compliance with this condition. ANC 2B reviewed and passed resolutions on October 8, 2014 and again on November 12, 2015 stating that the ANC has spoken with several neighbors who do not have any additional concerns about current operations and who indicated that conditions in the Order are being met. Church has met its annual obligation to meet with the ANC and the ANC continues to appreciate the Church's and Theater's willingness to meet with and address concerns from neighbors. See Resolutions, Exhibit G.

Condition No. 10: The Church shall create a mission for charitable and educational activity in which the rental theater shall be a participant.

The Applicant is in compliance with this condition. The Theater has partnered with nearby Ross Elementary School, located at 1730 R St NW, to host weekly after-school theater enrichment classes for approximately 10 students. This program provides an introduction to basic acting concepts and skills through theater games, exercises, and improvisation. The first semester's work will culminate in a short play, *The Care and Feeding of a Dragon*, to be performed by the students for parents and friends before the winter break. Facilities for the classes and performance are donated by the Church.

V. JUSTIFICATION FOR USE VARIANCE

An Applicant must satisfy three requirements to obtain approval of a use variance: (i) a unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property; (ii) undue hardship to the owner; and (iii) no substantial harm to the public good and no substantial impairment of the zone plan. *Monaco v. BZA*, 407 A.2d 1091, 1096 (D.C. 1980); *National Black Child Development Institute v. BZA*, 483 A. 2d 687, 690 (D.C. 1984). The subject Application meets these legal tests, as discussed below.

A. Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition of a Specific Piece of Property.

The Property is exceptional in two significant respects: first, as the result of the extraordinary earthquake in 2011, the Building suffered significant damage which required expensive repairs and restoration which could not have been undertaken without the income generated by a theater use of its building; and second, the basement of the Building cannot be economically used by the Church, except occasionally, because of a small and declining congregation of only forty (40) active Church members (caused, in part, by an aging population and flight to the suburbs) unless it is put to a viable income-producing use such as a theater use.

The D.C. Court of Appeals in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291 (D.C. 1974) held that the exceptional situation or condition standard goes to the “property” not just the “land”; and that “property generally includes the permanent structures existing on the land [footnote omitted].” *Id.* At 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e. the building on the land). Further, the characterization of the use as a public service is significant to the determination of uniqueness. In *Monaco v. District of Columbia BZA*, the D.C. Court of Appeals held:

While a commercial user before the BZA might not be able to establish uniqueness in a particular site's exceptional profit-making potential, we consider that the BZA may be more flexible when it assesses a non-profit organization . . . As Professor Anderson has observed, a public need for the use is an important factor in granting or denying a variance . . .”

Monaco, 407 A.2d 1091, 1098 (D.C. 1979).

The Church, a non-profit, was built in 1930 and is a contributing structure in the Sixteenth Street Historic District. The Church Building has had to undergo expensive repairs as the result of the earthquake and will continue to need repairs as a result of its age.

On August 23, 2011, a magnitude 5.8 earthquake hit the D.C. area damaging the Church along with the National Monument, the National Cathedral, the Smithsonian Castle, various embassies and other properties in the District. The earthquake resulted in extensive damage to the Property and the Church

In November of 2015, the Church began the restoration of the West Wall of the Sanctuary, including replacement of crumbling capstones that had begun to cause water damage to the internal West (altar) wall. See Photos, Exhibit D. In addition, significant tuck pointing will occur to further stop water incursion, in addition to other water prevention activities. The cost of this work will be \$80,000. To restore the stained glass windows on the West wall will require an additional \$23,000 which is currently being raised. Following this work, the external sanctuary East and North walls require restoration, as water incursion is occurring in these walls under similar circumstances (capstone replacement, tuck pointing etc). It is anticipated that each wall will cost \$100,000 or more assuming restoration of the stained glass windows. Furthermore, stone work to all entrances of the church is showing water damage as well.

In addition, the Applicant is working with HPO to come up with a preservation sensitive way to make the Building ADA compliant. Funds are needed for such a renovation and the lease with the Theater is an important revenue source. Being able to show the Theater will be in the

current space for an additional six years will be helpful when trying to obtain a loan for the renovations.

The Property is exceptional and unique as a result of this extensive earthquake damage.

B. Undue Hardship to the Owner.

The Applicant, a non-profit entity, faces undue hardship as a result of 1) a declining membership 2) managing the church with a minimal operating budget 3) the expense of both the repairs needed as a result of the earthquake and the effects of its age.

The BZA may apply a more flexible standard for determining hardship when the applicant is a public service or non-profit entity, as is applicable in this case. *National Black Child Development Institute v. District of Columbia BZA*, 483 A.2d at 690 and *Monaco v. District of Columbia BZA*, 407 A.2d.1091.

The court found in one case that the drop in the number of young men entering the priesthood caused maintenance of the large seminary to be a hardship. *Clerics of St. Viator*, 320 A.2d 291. Similar to the subject property, the decline in active Church members has also resulted in building maintenance becoming a hardship for the Church since fewer members result in reduced financial resources for repairs. The active membership of the Church consists of approximately 40 people, with average attendance of 25 to 35 persons on any given Sunday. In addition to a declining membership, the Church has a limited operating budget of only \$189,192.50.

During the last fiscal year, the Church re-structured its staffing and hired two part-time pastors, one of which assumes the majority of administrative duties. The Church's staffing budget has remained essentially the same over the past three years, inadequate to hire one full-time minister. The Church continues to use laity in the pulpit for many of its services.

In addition to the decline in active members and the limited operating budget, the Church's Building is in disrepair due to its age.

The theater provides, among other things, three functions: it allows the Church to convert the auditorium space with limited functionality to one that permits use of the space on a year-round basis, furthers the Church's mission of community outreach and service and provides a source of needed income. The relationship with the theater company is an important partnership that not only helps the Building stay vibrant and busy throughout the week, but offers much needed income from the theater, which is expected to be over \$30,000 in 2015. Most importantly, the theater use provides necessary funds to be used by the Church for ongoing repair due to the building's age.

C. No Substantial Harm to the Public Good and No Substantial Impairment of the Zone Plan.

The Church, despite its small congregation and financial difficulties, continues to provide social services to the community, including making the Church available to "Food for All", which distributes food to those in need in D.C. The Church also provides facilities or services to various counseling groups for those facing drug and alcohol dependence and other social causes. The Church is also committed to artistic expression as exemplified by its partnership with the theater.

The requested use variance can be granted without creating adverse impacts on nearby residential properties. First, the use of the rear entrance to the Building for access to the basement for theater use – from the alley – has been discontinued and will not be allowed in the future. Second, the use of the basement multipurpose room by Spooky Action Theater has not caused any noise to be generated outside of the Building when the front entrance is used, which is why the theater discontinued using the rear entrance several years ago. Third, the activities by

the theater have not caused any noticeable traffic or parking problems because the vast majority of its patrons walk or take public transportation to the site. Fourth, income generated by the theater use enables repairs and restoration to be undertaken by the Church.

The revenue received from the Theater will allow the Church to move forward with the continued need for repairs and restoration of the Building which in turn will improve the appearance of the Church and make it a more inviting place for existing and potential members. The Church's restoration of the west wall has already had a positive impact on the community.

VI. EXHIBITS

Exhibit A: Zone Map
Exhibit B: BZA Order No. 18471
Exhibit C: Certificate of Occupancy No. 1303141
Exhibit D: Photos
Exhibit E: Surveyor's Plat
Exhibit F: Floor Plans
Exhibit G: 2014 and 2015 ANC 2B Resolutions

VII. CONCLUSION

For the reasons set forth above, the Applicant respectfully requests approval of the grant of a variance to allow for the continued use of the basement of the Church Building as a nonprofit theater.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



By: _____
John Patrick Brown, Jr.



By: _____
Kate M. Olson

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