

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Stephen Cochran, Case Manager
 Joel Lawson, Associate Director Development Review
DATE: April 29, 2014

SUBJECT: BZA Case 18722: 1742 Church Street, NW – Square 156, Lot 847

I. RECOMMENDATION

The Office of Planning (OP) recommends the Board of Zoning Adjustment (BZA) **approve** the requested use variance relief from § 350.4 to continue to allow the use of the property at 1742 Church Street, NW as a professional theater, subject to the following conditions:

- Uses: Uses are limited to live theater and performing arts, adjunct classroom uses, and meeting space for community uses.
- Seating: There shall be no more than 125 seats in the facility.
- Hours of Operation: The facility shall be open to the public 8: a.m. to midnight, with unlimited access by theater company employees, actors and persons associated with the production of scheduled performances, unless otherwise restricted by the applicant, District regulations or community agreements.
- Sanitation: All refuse/recycling will be stored in enclosed containers, screened from public view.

When the property changed owners recently, the Zoning Administrator determined that use variance relief is needed before a certificate of occupancy could be issued to allow the continued use of the property as a theater.

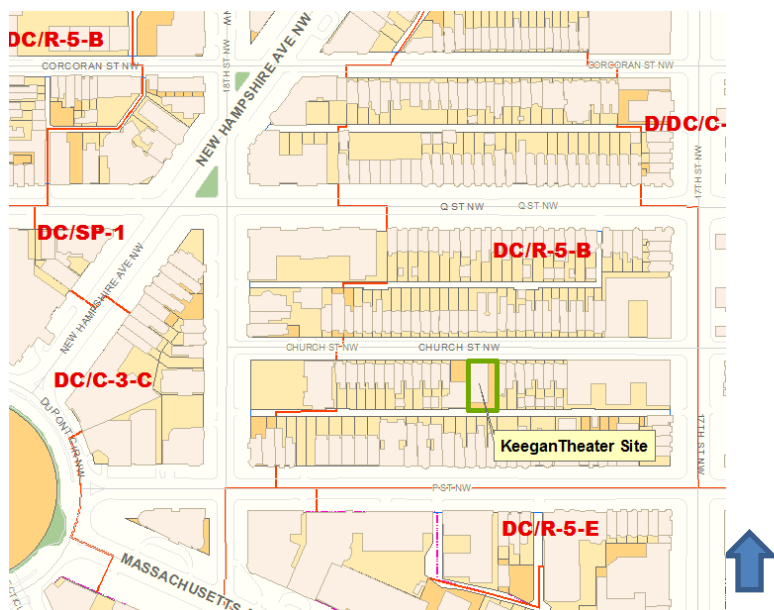


Figure 1. a and b.
Site Location and Street View

II. BACKGROUND AND REQUESTED RELIEF

The property is located in an R-5-B zone and has been used solely for non-residential purposes since the present building’s construction in the early 20th century as a private school gymnasium. In Order 12521 the Board granted a special exception in 1978 to use the property as a School for Theater Arts, with a maximum seating capacity of 125 and a 12 midnight closing time.

Although the space has been used for professional theater and other performance uses since then, its most recent (1996) certificate of occupancy (C of O) was for a “School/Theater Arts (Production Classes Workshop.” The present applicant, the Andrew Keegan Theater Company, has been staging shows at the property since 2005. During this time, there were seven to eight individual shows mounted each year. Each show ran for at least three weeks and was presented to no more than 125 people at a time. However, after the Keegan Theater purchased the property in 2013 and sought to renew its C of O, the Zoning Administrator determined that the current and projected operations would require a different C of O: one for a theater for performing arts, rather than as a school for theater arts. Since a professional theater is not by permitted in the R-5-B zone as either a matter of right or as a special exception, the applicant was advised that a use variance would be necessary.

III. LOCATION AND SITE DESCRIPTION

Address: 1742 Church St., NW	Legal Description: Sq.156, Lot 847	Zone: R-5-B	Ward/ANC: 2B
Owner: The Andrew Keegan Theater Company	Agent: Nicole Hoffpaur, architect	Historic District: Contributing Structure to the Dupont Circle District	
Lot and Characteristics:	Flat, rectangular 54 ft. by 95 ft. lot, with rear alley access		
Existing Development:	1-story semi-detached, approximately 30 foot-high, 37.1 foot wide and 80.6 foot deep former gymnasium building, operating as a theater school, and for theatrical and other performances since approximately 1978.		
Adjacent Properties:	East: two-story rowhouse/flat. West: two-story semi-detached house		
Neighborhood Character:	A mix of two and 3 story row houses used as single family dwellings and flats, garden apartments, 70-90 foot tall apartment buildings, a neighborhood commercial center on 17 th Street, and residential and institutional uses on 18 th Street. The Dupont Circle Metro is 2.5 blocks from the applicant’s site.		
Project Description: The applicant seeks permission to continue operating a professional theater on the site.			

IV. ZONING REQUIREMENTS

Private and public theater uses are not permitted by right in strictly residential zones. They are first allowed in the Mixed Use Commercial-Residential (CR) District. Theater uses including movie theaters are first permitted in the C-2 district.

The historic property's physical conditions are grandfathered, and the Zoning Administrator has determined that planned ADA-related physical changes shown on the applicant's architectural drawings are permitted by-right. The modifications are not part of this variance application.

V. OP ANALYSIS

In order to be granted a use variance, the applicant must show that the application meets the three part test described in §3103:

1. **Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions that;**
2. **Imposes an undue hardship on the property owner?**

The applicant has demonstrated that there are several exceptional situations and conditions that would impose an undue hardship on the applicant.

Exceptional Conditions:

The building's design, its history of uses and zoning decisions, and its tax classification clearly demonstrate the property's exceptional conditions.

Design: On the outside it is essentially a peaked-roof box that, although only one story high, is consistent with the height of typical nearby row-houses, but is twice as wide as they are. Inside, it is one large volume from the floor to the underside of the roof. Since the late 1970's it has been fitted-out with risers, permanent seating, audio equipment and a grid of lighting and that takes full advantage of the double to triple-height open, column-free, space. The non-residential building's exceptional volume, structure and configuration were also noted by the BZA in 1978's Order 12521, which found that "the subject building could not readily be used for residential purposes".

Use History: Although the property is located in a residential zone, it has never been used for residential purposes. The building was constructed in the early twentieth century as a private school's gymnasium and had a succession of non-residential uses since then. The history of non-residential uses was considered when the building was designated a contributing building to the Dupont Circle historic district. BZA Order 12521 granted permission in 1978 to use the property as a School for Theater Arts, subject to conditions that it close by midnight, that performances be held only on weekends and that seating be limited to 125 persons. These uses, for which the applicant's Exhibit D provides details, have been operating under a certificate of occupancy for "School/Theater Arts (Production Classes Workshop" since 1996.

Tax Classification: Despite DCRA's Certificate of Occupancy designation, the District of Columbia has already classified the property for tax purposes as a "Theater, Entertainment (Class 2): Structure with primary use for live, on-screen, or audience participation entertainment".

Undue Hardship

The applicant has stated that after leasing the building for five years for theatrical purposes, it purchased the building with every reasonable expectation that it could continue to use it for the theatrical purposes for which it had been used for over thirty years. The Keegan Theater Company is organized to provide classes only as an auxiliary function to its primary theater mission. If the use variance is not granted the Company would need to sell the building it has occupied for nine years, but owned for less than one year, and find another performance space in the District or suburbs. As noted by the applicant such actions would severely disrupt the theater's operations, endanger the subscription base of the substantial number of patrons who walk to the theater, impose undue hardship on the company's financial health and alter its institutional identity as a unique cultural offering in the Dupont Circle neighborhood.

3. Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?

Past history has already demonstrated that the property's continued use as a theater would likely cause no substantial harm to the public good. Non-residential uses have been operating at this location for approximately a century, without apparent incident. Theaters have been operating at this location for over thirty years without incident, subject to BZA Order 12521's conditions.

If the requested relief is granted, the applicant would continue to observe Order 12521's limitations on hours of operation and seating, would enclose its trash containers and expand its accessibility to the disabled. However, the applicant has requested that a future order no longer limit the days of operation or performances.

Comments filed by the ANC and other local organizations indicate the loss of the theater may impose a significant loss to neighborhood residents. The public support for, and general lack of opposition to, the application in the case files also attests to its likely lack of a substantial detriment to the public good.

The granting of the requested variance would not likely cause substantial impairment to the intent of the zoning regulations. It would be based, in part, on the property's exceptional condition of a long history of use similar to the one for which relief is requested, and to that having been the primary use of the entire property, not one that is secondary to the property's major use. These circumstances would apply to few, if any, other properties in the District. The conditions recommended by the Office of Planning and agreed to by the applicant, would ensure that the property's future use of the property would be restricted to its existing uses, rather than permitting the full range of uses often permitted a theater use.

VI. HISTORIC PRESERVATION

The site is a contributing structure to the Dupont Circle Historic District. While the building's past uses were considered in determining its eligibility, its future use would be of concern only if it required changes to the building's exterior. The planned ADA-related addition has already been approved by the Historic Preservation Review Board staff.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

In a filing dated March 4, 2014, the District Department of Transportation (DDOT) stated it has no objection to approval of the requested variance. It determined that the variance would have no impact on the transportation network, but could potentially continue to have minor localized impacts on parking, which DDOT would work to address.

VIII. COMMUNITY COMMENTS

ANC 2B voted unanimously to support the requested relief on February 17, 2013.

The east-adjacent neighbor has filed for party status in support of the application. Fourteen residents of the 1700 block of Church Street have signed a petition of support. Another petition of support has been submitted with 33 signatures. Individual support letters are on file from six other neighborhood residents and the principal of the local public elementary school. As of April 22, 2014 there were no filings opposing the application.