

**BOARD OF ADJUSTMENT
CITY AND COUNTY OF DENVER
201 West Colfax Avenue, Department 201
Denver CO, 80202**

PREMISES AFFECTED: 4979 West 44th Avenue
LEGAL DESCRIPTION: Lots 17 to 24 Inclusive, Block 27, Berkeley 02192

APPLICANT(S) 4979 W 44th Ave LLC by Ari Stutz, 4751 Broadway, Denver, CO 80216 ,
Filed By: Jim Pfeiffer, 1490 North Lafayette Street, Suite 408, Denver, CO 80218
Kyle Hagan & Macy Lao, 4979 West 44th Avenue, Denver, CO 80212

APPEARANCES:

APPLICANT: Ari Stutz, 2525 South Milwaukee Street, Denver, CO 80210
Jim Pfeiffer, 1490 North Lafayette Street, Suite 408, Denver, CO 80218
Kyle Hagan, 3840 Shoshone Street, Denver, CO 80211
Rachel Marion, 1777 East 39th Avenue, Denver, CO 80205
Rafael Espinoza, 2101 North Clay Street, Denver, CO 80211
Bill & Rita Killam, 4312 North Yates Street, Denver, CO 80212
Dan Swislow, 3915 North Lowell Boulevard, Denver, CO 80211
Tanner Smith, 4347 North Yates Street, Denver, CO 80212
John Deffenbaugh, 100 Park Avenue West, Denver, CO 80205
Alejandra Castaneda, 3134 West 40th Avenue, Denver, CO 80211
Elif Gabb, 4150 North Jason Street, Apartment 809, Denver, CO 80211
Noah Smith, 7685 East Gunnison Place, Denver, CO 80231
Connor Willadson, 4150 Jason Street, Apartment 738, Denver, CO 80211
Brandon Sweeney, 1490 Lafayette Street, Suite 408, Denver, CO 80218
Norah Hoffman, 1490 Lafayette Street, Suite 408, Denver, CO 80218
Adam Steinbach, 1490 North Lafayette Street, Suite 408, Denver, CO Street 80218
Good Neighbor Agreement (Berkeley Regis United Neighbors, February 24, 2026)
Letter of Support (Berkeley Regis United Neighbors, February 25, 2026)
35 (Thirty-five) Letters of Support

OPPOSITION: Brian De Bono, 4534 North Yates Street, Denver, CO 80212
Amy Siegal, 4469 North Yates Street, Denver, CO 80212
4 (Four) Letters of Opposition

FOR THE CITY: Nicholas Hufford, Zoning Representative

SUBJECT:

Request for a Variance for an Arts, Recreation, and Entertainment, Indoor Use containing 310 seats, exceeding the maximum allowed number of seats by 210 seats (100 seat maximum permitted), in a U-MX-2, DO-8 zone district

ACTION OF THE BOARD:

THE VARIANCE IS GRANTED under the Unusual Physical Conditions or Circumstances variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing, and with the following conditions:

1. Operating Hours for the Theater shall cease by 12:00 AM, seven days / week. Alcohol service will end by 11:00 PM. If operations require a start time earlier than 12:00 PM (noon) BRUN Representatives will be notified at least one week in advance. The auditorium area will be closed when no films or performances are scheduled but the lounge / lobby area is open,
2. The theater will be operated with all doors and windows closed during all shows and events,
3. Yates Theater will provide information regarding preferred vehicular parking locations for theater patrons / customers on its website, social media, and printed information distributed in conjunction with events,
4. Yates theater shall install readily visible signage at all exits requesting patrons to respect neighbors by keeping noise to a minimum as they exit the premises and respect parking regulations for Public ROW and private property,
5. All outdoor queueing for events shall be directed along 44th Avenue and extend north onto Yates Street, and if necessary into the surface parking lot north of the theater,
6. Yates Theater will have a manager on duty at all times that the venue is open who will serve as the designated Point of Contact accessible during business hours to address any issues and concerns. The Point of Contact information will be provided on the website,
7. Yates Theater will comply with all City ordinances, codes, and regulations.

Questions about this decision may be addressed to Austin Keithler, 720-913-3050, at the Board's office.
NOTE: A digital copy of the Board-approved plans may be obtained by contacting the Board's staff. These approved plans MUST be submitted to the Development Services Log-In counter when applying for final construction permits for this project.

BOARD OF ADJUSTMENT
Ignacio Correa-Ortiz, Chair

Austin Keithler

Austin E Keithler, Director

THIS ACTION BY THE BOARD OF ADJUSTMENT IS NOT AN APPROVAL TO PROCEED WITH DEVELOPMENT. PLEASE CONTACT YOUR ASSIGNED REVIEWER WITH CPD TO COMPLETE AND FINALIZE YOUR ZONING PERMIT OR ZONE LOT AMENDMENT APPLICATION. CONSTRUCTION OR ANY OTHER DEVELOPMENT ACTIVITY IS PROHIBITED ON THE SUBJECT REAL PROPERTY UNTIL YOU COMPLETE ALL ZONING AND PERMIT APPROVAL PROCESSES.

NOTE!! VARIANCES AUTHORIZING CONSTRUCTION WILL EXPIRE UNLESS START OF CONSTRUCTION HAS OCCURRED WITHIN 3 YEARS AND IS COMPLETED WITHIN 5 YEARS FROM THE DATE THE VARIANCE WAS GRANTED. (FOR EXTENSIONS, SEE DENVER ZONING CODE, SECTION 12.4.7.7.A.2.)

IN THE BOARD OF ADJUSTMENT
THE CITY AND COUNTY OF DENVER
FINDINGS OF FACT AND CONCLUSIONS OF LAW

MARCH 24, 2026

CASE NO. 9-2026

PREMISES: 4979 WEST 44TH AVENUE. (Lots 17 to 24, Block 27, Berkeley 02192.)

APPLICANT(S): 4979 W 44TH AVE LLC by Ari Stutz, 4751 Broadway, Denver, CO 80216, by Jim Pfeiffer, 1490 North Lafayette Street, Suite 408, Denver, CO 80218, & Kyle Hagan & Macy Lao, 4979 West 44th Avenue, Denver, CO 80212.

SUBJECT: Request for a Variance for an Arts, Recreation, and Entertainment, Indoor Use containing 310 seats, exceeding the maximum allowed number of seats by 210 seats (100 seat maximum permitted), in a U-MX-2, DO-8 zone district

NOTICE OF HEARING: Premises posted. Public notice given in accordance with Section 2-35(2) and 12-96 of the Revised Municipal Code.

APPEARANCES:

Applicant:

Ari Stutz, 2525 South Milwaukee Street, Denver, CO 80210
Jim Pfeiffer, 1490 North Lafayette Street, Suite 408, Denver, CO 80218
Kyle Hagan, 3840 Shoshone Street, Denver, CO 80211
Rachel Marion, 1777 East 39th Avenue, Denver, CO 80205
Rafael Espinoza, 2101 North Clay Street, Denver, CO 80211
Bill & Rita Killam, 4312 North Yates Street, Denver, CO 80212
Dan Swislow, 3915 North Lowell Boulevard, Denver, CO 80211
Tanner Smith, 4347 North Yates Street, Denver, CO 80212
John Deffenbaugh, 100 Park Avenue West, Denver, CO 80205
Alejandra Castaneda, 3134 West 40th Avenue, Denver, CO 80211
Elif Gabb, 4150 North Jason Street, Apartment 809, Denver, CO 80211
Noah Smith, 7685 East Gunnison Place, Denver, CO 80231
Connor Willadson, 4150 Jason Street, Apartment 738, Denver, CO 80211
Brandon Sweeney, 1490 Lafayette Street, Suite 408, Denver, CO 80218
Norah Hoffman, 1490 Lafayette Street, Suite 408, Denver, CO 80218
Adam Steinbach, 1490 North Lafayette Street, Suite 408, Denver, CO Street 80218
Good Neighbor Agreement (Berkeley Regis United Neighbors, February 24, 2026)
Letter of Support (Berkeley Regis United Neighbors, February 25, 2026)
35 (Thirty-five) Letters of Support

Opposition:

Brian De Bono, 4534 North Yates Street, Denver, CO 80212
Amy Siegal, 4469 North Yates Street, Denver, CO 80212
4 (Four) Letters of Opposition

For The City:

Nicholas Hufford, Zoning Representative

FINDINGS OF FACT:

I. The application was timely filed February 5, 2026, from a Zoning Relief Pre-Application Meeting Summary dated January 27, 2026. The case was heard on March 10, 2026, at which time the variance with

conditions was granted. Final Findings of Fact and Conclusions of Law were adopted by the Board on March 24, 2026.

II. The Applicants request a variance under Sections 12.4.7.5 and 12.4.7.6 of the Denver Zoning Code (DZC). The Board finds that the Applicants meet the following conditions for a variance under Section 12.4.7.5.A, “Unusual Physical Conditions or Circumstances:”

A. Unusual Physical Conditions or Circumstances:

1. There are unusual physical circumstances or conditions peculiar to the affected property.

- a. The subject property is a single-story commercial development located in the Berkeley neighborhood. The property is a single zone lot with two abutting commercial structures located on the northeast corner of West 44th Avenue and North Yates Street. The western structure is located at along West 44th Avenue and North Yates Street. This structure is divided up into eight commercial units, most of which front onto North Yates Street. The eastern structure is located along West 44th Avenue, between the western commercial structure and the north-to-south running alley on the block. The eastern structure is the subject of the current application. This structure was purpose built in 1927 as a 500-person theater, called the Yates Theater. The theater operated until the 1950’s, after which time the space operated as a furniture store and most recently a piano sales and repair store. The theater space has been vacant since the 1990’s. The current owner purchased the property around 10 years ago and has been trying to find an appropriate use for the space since that time. The property owner was in the process of developing the space into a 700-person music venue, but the beginning of the pandemic in 2020 put an end to those plans. The property owner has found a new tenant who is interested in developing the space into a single-screen movie theater. The tenant, Waystation LLC., intends for the venue to be a film-first repertory movie theater, focused on classic, independent, and community-oriented programming. Beyond showing films, they may have occasional, small-scale live performances. They propose to have a bar / lounge area at the front of the theater as well. This area will generally be open during business hours, but once a film begins the lobby will only be open to ticketed patrons. The Applicants have run into an issue with a zoning use limitation which makes developing the space in compliance with the Code effectively impossible without demolishing or drastically altering the structure. The Applicants believe they have come up with a reasonable proposal and that they have plans in place to mitigate any external impacts. They ask the Board to consider their request for a variance. (Testimony of Rachel Marion. See also Exhibit 2 – Board’s Sketch, Exhibit 3 – Board’s Posting Photos, Exhibit 5 – Variance Application, and Exhibit 8 – Supporting Documentation.)
- b. The Applicants have run into a problem with a specific limitation in the zoning code pertaining to the maximum seating capacity for an Arts, Recreation, and Entertainment, Indoor Use, which is what the classification for the movie theater. In all MX-2X, MX-2A, and MX-2, as well as MS-2X, and MS-2 zone districts, the seating capacity for Arts, Entertainment and recreation, Indoor Uses is limited to no more than 100 persons. In addition to the fact that 100 seats is very small for a movie theater, there is no way to make the historic Yates Theater comply with this limitation short of demolishing or making significant alterations to the structure. The theater was purpose built to serve as a theater with 500 seats. Despite being used as a furniture store and a piano store for years, many of the original theater features remain intact. The structure still contains the original stage and all associated support spaces. There is a sloped floor throughout the seating area, a production space adjacent to and below the stage, a projection room with staff areas, and a reception area by the building entry. The Applicants do not propose to increase the building footprint or expand the seating capacity. They propose to reduce the seating capacity from the original 500 seats down to 310. However, even this reduction

in seating area will exceed the maximum seating capacity limitation by 210 seats. Due to how the building code calculates occupancy there is no way to make the existing space meet the 100-person limit. Fixed seating calculates the total occupancy at 1 person per seat, but the theater space would remain largely empty with only 100 seats. For spaces with fixed seating as well as open space, a calculation of 1 occupant per 7 square feet would be calculated for all remaining open space in the theater apart from the 100 fixed seats. The Yates Theater is 5,367 square feet, making the calculated seating capacity far more than either the 100-seat limit prescribed by Code or the 310-seat limit requested by the Applicants. The Applicants therefore believe that their request for 310 seats is a reasonable request given the unusual conditions present on the property. (Testimony of Rachel Marion. See also Exhibit 2 – Board’s Sketch, Exhibit 3 – Board’s Posting Photos, Exhibit 5 – Variance Application, and Exhibit 8 – Supporting Documentation.)

2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located except for those adjustments based on any of the conditions listed in Section 12.4.7.5.A.2. The unusual condition is based on the existing and remaining structure, so it is not necessary to find that this condition does not exist throughout the surrounding neighborhood. (Testimony of Rachel Marion. Testimony of Nicholas Hufford. See also Exhibit 5 – Variance Application, and Exhibit 22 – CPD Presentation.)
 3. The unusual physical circumstances or conditions have not been created by the applicants. The theater was purpose built at this size in the 1920’s, well before the Applicants’ interest in the property. (Testimony of Rachel Marion.)
 4. The unusual physical condition or circumstance causes the need for the variance. In order to preserve and reuse the existing historic structure for its’ historic use, a variance is necessary. The physical space of the theater makes compliance with the seating capacity limitation impossible without significant modifications to the existing structure. The modifications which would be required to reduce the seating capacity would be significant enough that they may result in the complete demolition of the structure. (Testimony of Rachel Marion. Testimony of Nicholas Hufford. See also Exhibit 5 – Variance Application, and Exhibit 22 – CPD Presentation.)
- B. If granted, the variance would meet the following requirements for all variance approvals under 12.4.7.6. DZC:
1. It would not relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure. This condition does not apply to the commercial structure.
 2. Except as allowed in Section 12.4.7.5, it would not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted. The variance is justified based on the unusual conditions and circumstances on the property rather than a financial hardship. The Applicants note that a more intensive use with a higher occupancy could be approved as a use by right; they are intentionally seeking a smaller capacity, less intensive use than the Code would allow. (Testimony of Rachel Marion. See also Exhibit 5 – Variance Application.)
 3. It would not substantially impair the intent and purpose of this Code. The Applicants believe the project meets the intent and purpose of the Code in several ways. The Code seeks to guide reinvestment in established neighborhoods that reinforces their unique characteristics, and it seeks to promote the preservation and protection of historic resources. The property has been sitting vacant since the 1990’s. Approving the variance will allow the historic structure to be revitalized and to bring new life to the neighborhood. If the variance is not approved but the Applicants still wished to develop the property, the historic structure would either need to be drastically modified or possibly demolished. Alternatively, a higher occupancy, more intensive use could occupy the space without a variance, but the Applicants believe the proposal will fit better into the established neighborhood. (Testimony of Rachel Marion. See also Exhibit 5 – Variance Application.)

4. It would not substantially impair the intent and purpose of the applicable zone district. The property is located in the U-MX-2 zone district, which is an Urban Mixed Use zone district. The overall building form of the structure aligns with the intent of the U-MX-2 zone district, as it aligns with the scale and character of the neighborhood. Additionally, the Applicants believe that the project will align with some of the specifically stated goals for the U-MX-2 zone district as well. The district is intended to enhance the convenience and enjoyment of walking, shopping, and public gathering within the city's neighborhoods. The structure historically served the purpose of a public gathering space within the surrounding neighborhood, and the Applicants intend to restore this function. The proposal will be a far smaller theater than a suburban multiplex and it will contribute to a diversification of amenities which are walkable in the area. (Testimony of Rachel Marion. See also Exhibit 5 – Variance Application.)
5. It would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent property.
 - a. The Applicants note that they are seeking to retain and restore the existing historic structure. They do not propose to expand the floor area of the building or to make any significant changes to the structure. The Applicants acknowledge that the 310-person seating capacity theater has some potential for adverse impacts on the surrounding neighborhood, but they believe their request is a reasonable compromise to some alternative options that the Code allows by right. The Code limits an Arts, Recreation, and Entertainment Indoor Use to a 100-person seating capacity, but this limitation is only for seating capacity, not for overall occupancy. Several higher occupancy and higher intensity uses could instead be developed without the need for a variance, but the Applicants are intending a less intensive use which they feel would better fit into the neighborhood. A 700-person standing room live music venue could be developed. This falls under the Arts, Recreation, and Entertainment Indoor Use, but the 100-person limit would not apply as there would be no seats. A 700-person bar, or a 380-person restaurant could both be created in the space as they fall under the Eating and Drinking Establishment Use rather than the Arts, Recreation, and Entertainment Indoor Use. The Eating and Drinking Use does not have the 100-person limit that the Arts, Recreation, and Entertainment Indoor Use does. The Applicants note that their proposal on the other hand would be a less intense use with lower occupancy. (Testimony of Rachel Marion. Exhibit 5 – Variance Application, and Exhibit 8 – Supporting Documentation.)
 - b. The Applicants have also performed extensive neighborhood outreach with the local community and adjacent property owners to identify and address their concerns. They have heard that neighbors are worried that the establishment of the 310-person theater will open the door for a higher occupancy, more intensive use to come into the structure. The Applicants note that the process would be far simpler to develop a higher occupancy use in the structure than it is to create the seated theater use. A zoning permit was previously issued for a 700-person capacity standing room only music venue. Although the pandemic sidelined this project, it could still be developed by right without the need for any neighborhood buy-in to the project. The Applicants have also heard that concerns over operating hours, parking arrangements, and noise are the largest concerns of neighbors. They have engaged with the Berkeley Regis United Neighbors (BRUN), a local Registered Neighborhood Organization (RNO), to work cooperatively with the neighborhood to ensure these concerns are met. The Applicants have signed a Good Neighbor Agreement (GNA) with BRUN which they believe outlines reasonable conditions to mitigate neighborhood impacts from the theater. (Testimony of Rachel Marion. See also Exhibit 7 – BRUN GNA, and Exhibit 11 – BRUN Support Letter.)

- c. The Applicants have heard concerns from neighbors over parking for the theater use. The city has recently eliminated parking minimums from the zoning code, so regardless of the use of the structure parking would not be required. Although it is not required by Code, the Applicants want to ensure they address the concerns of the neighborhood. They have secured a parking agreement to use 45 nearby parking spaces, located near West 44th Avenue and North Sheridan Boulevard. The Applicants have submitted the parking agreement, which is currently signed for a one-year period. BRUN is agreeable to the Applicants using of these parking spaces and has included this information in their GNA. The Applicants also believe that parking for the theater can be easily accommodated along West 44th Avenue without spilling over into the neighborhood. There are over 200 parking spaces along West 44th Avenue, between North Sheridan Boulevard and North Tennyson Street. West 44th Avenue is a busy street, and there is not currently striping or signage to alert people that parking is allowed on the street. The Applicants have owned the property since 2016. When they initially began to redevelop the commercial units along North Yates Street, they approached the city about striping parking spaces on West 44th. They were also interested in installing a crosswalk to connect the north and south sides of West 44th Avenue at North Yates Street. Unfortunately, neither the striping nor the crosswalk ended up being installed. As the Applicants are working to develop the theater space, they feel that this would be worth pursuing again. The GNA notes that the Applicants have agreed to work with the city to again pursue striping of parking spaces along West 44th Avenue. CPD staff and some members of the opposition to the request raised concerns that the off-site parking agreement was not sufficient to mitigate external impacts and that there was no guarantee that it would be a viable long-term option. The agreement was signed for only a one-year period, and it could be cancelled on short notice by either party. While the GNA referenced this agreement, there was no enforcement mechanism to require the parking to be maintained. CPD staff suggested including a condition to the variance which would require the Applicants to maintain 40 off-site parking spaces. As a condition of the variance approval, this would give the city the ability to enforce the parking requirements. (Testimony of Bryan DeBono. Testimony of Amy Siegel. Testimony of Nicholas Hufford. See also Exhibit 13 – Letter of Information / Opposition, Exhibit 14 – Letters of Opposition, and Exhibit 22 – CPD Presentation.) The Applicants noted that they had concerns about the off-site spaces being a condition of the variance, as they were owned by a third party and the Applicants themselves did not have full control over the spaces. While they intended to reserve the spaces and would continue to do so if it proved necessary, conditions could change for the owner of the spaces. The Applicants were hesitant to condition the approval of the variance on the use of a property that they did not own or control. The Applicants instead suggested revising the conditional language to reflect that they would use their best efforts to secure 40 off-site spaces at another location if the agreement were terminated in the future. (Testimony of Rachel Marion. See also Exhibit 10 – Parking Agreement, Exhibit 22 – CPD Presentation, and Exhibit 23 – Applicants’ Rebuttal.) The Board contemplated whether or not including the off-site parking as a condition of the variance would be appropriate. They noted that recent code changes had eliminated parking requirements city-wide, and it seemed contrary to the intent of this recent change to require parking for this specific use but not for any other similar uses in the city. Further, the Board concurred with the Applicants that there was ample opportunity to take advantage of the existing underutilized parking along West 44th Avenue. The Board ultimately decided that the Applicants had provided sufficient evidence that the theater use would not adversely impair the surrounding neighborhood in terms of parking and found this condition to be met.

- d. The Applicants have received a strong outpouring of support from many surrounding neighbors, who submitted letters of support and also attended the hearing to speak in support of the project. These neighbors approved of the Applicants' desire to retain and restore both the interior and exterior of the historic structure. They were also strongly in favor of a new use coming in to occupy the long-vacant structure. The movie theater would be a reasonably sized space which they did not believe would adversely impact the surrounding area. They believed that it would be a neighborhood amenity, where people from the area could easily walk to movies rather than having to drive elsewhere. Berkeley is an amazing, walkable neighborhood, and much of the support did not wish to see suburban parking standards imposed on their urban neighborhood. They did not believe that the theater use would create parking challenges to the neighborhood. Over 95% of surrounding residential properties have private parking on site, so resident parking is easily accommodated. There is ample opportunity for visitors to parking along West 44th Avenue, which would avoid parking in the neighborhood and could mitigate current traffic issues. (Testimony of John Deffenbaugh. Testimony of Rafael Espinoza. Testimony of Rita Killam. Testimony of Dan Swislow. Testimony of Tanner Smith. Testimony of Bill Killam. Testimony of Alejandra Castaneda. Testimony of Elif Gabb. Testimony of Noah Smith. See also Exhibit 12 – Letters of Support.)
6. It would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code. The Board noted that some of the opposition raised concerns over whether the request was the minimum change needed to afford relief. Further, the opposition raised concerns over whether the total occupancy would actually be for 370 persons rather than 310. They noted that the proposal included a 60-seat bar and lounge in addition to the 310-seat theater. The difference between the 310-seat variance request and the 370-seats shown in the plans was not sufficiently explained. (Testimony of Bryan DeBono. See also Exhibit 13 – Letter of Information / Opposition, and Exhibit 14 – Letters of Opposition.) The Applicants noted that although the theater will have additional seating in the bar and lounge area, that these do not contribute to the maximum seating count. The bar and lounge will be open during business hours when no ticketed event is occurring, but when a ticketed event is occurring only ticketed patrons will be allowed inside. Because the theater cannot sell more tickets than they have seats in the theater, there is no eventuality where more than 310 persons can occupy the space. Regarding the specific number of seats proposed, the Applicants note that the size of the theater has been in place for 100 years, and that it was originally built as a 500-person theater. The building code calculates occupancy as either 1 occupant per seat or 1 occupant per 7 feet of open space. The 310 seats proposed by the Applicants will be sufficient to make the theater feel occupied without feeling too open. The overall occupancy without fixed seats would be far greater based on the building code's occupancy calculations. See above at Findings II.A.1.b. (Testimony of Rachel Marion. See also Exhibit 8 – Supporting Documentation.) The Board concurs and finds this condition to be met.
7. It would adequately address any concerns raised by the Zoning Administrator or other City agencies in their review of the application. CPD staff stated that they were in support of the variance to the maximum seating capacity as they found that it satisfied the Unusual Physical Conditions or Circumstances criteria as well as the General Review criteria. However, CPD suggested including conditions on the approval of the variance which would help to safeguard the neighborhood from external impacts. CPD suggested imposing a condition requiring that 40 parking spaces be secured on a permanent basis as a condition of the variance. They suggested a limitation on operating hours which would be more in line with an eating and drinking establishment located in close proximity to residential properties, of 11 pm closing on Friday and Saturday and 10 pm all other days. CPD also suggested conditions requiring

doors and windows to be closed during all shows and events, that the theater provide information on preferred parking locations to patrons, that they maintain 40 off-site parking spaces, that they provide signage reminding patrons to respect the neighborhood when leaving, that queuing be directed along West 44th Avenue and north onto Yates Street, that there be a designated Point of Contact accessible during business hours, and that the theater comply with all city ordinances, codes, and regulations. (Testimony of Nicholas Hufford. See also Exhibit 22 – CPD Presentation.) The Applicants generally agreed with the proposed conditions, with two exceptions. The Applicants disagreed with the proposed limitations to the hours of operation and to the requirement to maintain 40 off-site parking spaces. The Applicants noted that the operation of a movie theater was not the same as the operation of a restaurant. The closing time of a restaurant can easily be made more consistent, but the closing time of a movie theater would vary from week to week, depending on the length of the feature playing at the time. The Applicants would like the theater to be open until midnight for times there are longer movies playing, but there will be times when the theater would close earlier when shorter movies are playing. The intent of the earlier closing hours is to mitigate noise concerns for neighbors. The Applicants expect that although the theater may remain open until later than 10:00 pm on weeknights, that there will likely be fewer patrons at these times. The Applicants believe that a small number of patrons leaving a theater on a weeknight will not create a significant noise level. The Applicants also note that the Crow Bar is a busy bar directly across West 44th Avenue, which is open later than midnight on weekdays. Any noise impacts from patrons exiting the theater on a weeknight are likely to be far less than those exiting the adjacent bar. (Testimony of Kyle Hagan. See also Exhibit 23 – Applicants’ Rebuttal.) The Applicants also disagreed as to the proposed condition on parking. See above at Findings II.B.5.c. CPD staff noted that if the Board disagreed with their position on the hours of operation, that it may be appropriate to use the language related to the proposed hours of operation from the GNA instead. The Board concurred, finding that the conditions proposed by CPD staff were appropriate, except as to the hours of operation and the parking requirements. The Board found it appropriate to leave out the proposed condition for the parking requirement and to use the language from the GNA regarding hours of operation instead of the language from CPDs position. (See Exhibit 7 – BRUN GNA, and Exhibit 22 – CPD Presentation.) The Board thus found this condition to be met.

CONCLUSION: The Board concludes that the conditions set forth in Sections 12.4.7.5 and 12.4.7.6 of the Zoning Code do exist, and a variance is in order.

MOTION: The motion by Mr. Haywood to grant the variance with conditions was seconded by Mr. Rice and was adopted.

VOTE: FOR: 5 AGAINST: 0

ACTION OF THE BOARD: THE VARIANCE IS GRANTED under the Unusual Physical Conditions or Circumstances variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing, and with the following conditions:

1. Operating Hours for the Theater shall cease by 12:00 AM, seven days / week. Alcohol service will end by 11:00 PM. If operations require a start time earlier than 12:00 PM (noon) BRUN Representatives will be notified at least one week in advance. The auditorium area will be closed when no films or performances are scheduled but the lounge / lobby area is open,
2. The theater will be operated with all doors and windows closed during all

shows and events,

3. Yates Theater will provide information regarding preferred vehicular parking locations for theater patrons / customers on its website, social media, and printed information distributed in conjunction with events,
4. Yates theater shall install readily visible signage at all exits requesting patrons to respect neighbors by keeping noise to a minimum as they exit the premises and respect parking regulations for Public ROW and private property,
5. All outdoor queuing for events shall be directed along 44th Avenue and extend north onto Yates Street, and if necessary into the surface parking lot north of the theater,
6. Yates Theater will have a manager on duty at all times that the venue is open who will serve as the designated Point of Contact accessible during business hours to address any issues and concerns. The Point of Contact information will be provided on the website,
7. Yates Theater will comply with all City ordinances, codes, and regulations.

Questions about this decision may be addressed to Austin Keithler, 720-913-3050, at the Board's office. NOTE: A digital copy of the Board-approved plans may be obtained by contacting the Board's staff. These approved plans MUST be submitted to the Development Services Log-In counter when applying for final construction permits for this project.