

Exec-Artistic Director
Jeremy D. Stanbary

Assoc. Director
Sarah E. Stanbary

Board of Directors
Nes Rotstein
Mark Blando
Jeremy Stanbary
Robert Stanbary



Open Window Theatre
1313 Chestnut Ave., #102
Minneapolis, MN 55403

Phone
612-615-1515

Email
freshair@openwindowtheatre.org

Website
www.openwindowtheatre.org

April 12, 2016

By Certified Mail and E-mail

Kristi Oman
Space Unlimited, LLC
Metropolis Minneapolis, LLC
100 West Franklin Ave., Suite 100
Minneapolis, MN 55404
kristioman@aol.com

Dear Kristi:

I am writing to follow up on my emails of December 8, 9, and 31, 2015 and January 7, 2016, as well as our Board Member Mark Blando's letter of December 3, 2015 and our further discussions since that time.

As you know, we've learned within the last year that when you leased the space to us in 2011 to be used as a "performing arts venue," the building was not zoned for that use, and no certificate of occupancy had ever been obtained for our space. And as laid out in my email of January 7, our review has revealed that (1) you have not obtained a certificate of occupancy for any space in the building since you took it over in 2004, (2) the remodeling permits you took out between 2007-2009 (see Attachment "A" – Permit #3048603 and Attachment "B" – Permit #3060181), which essentially changed the use of the building from its previous industrial manufacturing warehouse usage to its current multi-tenant commercial lease usage, appear to have been canceled without approved final inspections from the city, and (3) the last certificate of occupancy on record for the building dates back to 1969 according to the Minneapolis Development Review clerk, which was well before your change of use in 2007. You have not disputed any of these statements.

We've confirmed with numerous government officials, building owners, and real estate professionals, and by reference to state laws, that you, as the owner of the building, were responsible for obtaining a certificate of occupancy for the building when you changed its use after acquiring it. That duty remained when you agreed to rent our space to us, and nothing in our lease says otherwise. And had you completed the final inspections to properly close out the remodeling permits from 2007-2009, that would have triggered the issuance of a certificate of occupancy for the building. Those inspections would have also revealed any code issues with the building, including whether a fire sprinkler system was needed, and would have triggered a new Sewer Access Charges (SAC) determination for your use of the building.

For example, a licensed architect has informed us that the two single-toilet public restrooms you installed in the building appear to be insufficient according to code for this size building and its subsequent occupant load. And it appears from an early floor plan that we obtained from you that many more restrooms and toilets were originally planned for this building, but were never installed. It seems that an adequate number of public restrooms/toilets, in addition to properly closed out building permits with final inspections, would have triggered a new SAC determination for the building, relieving us of this undue burden and, in fact, would have prevented us from needing to build out additional restrooms for our patrons to begin with. But because the process was left open back in 2007, all of these issues remain to this day, causing us to suffer the consequences.

As you know, we were able to work out the zoning issue on our own, consuming scores of hours of architectural and legal time and great effort and expense to myself and our Board. Once the rezone was approved by the city council in the fall of 2015, we reminded you of your obligation to obtain a certificate of occupancy to allow us to continue to use the space as promised in our lease. You refused to do that, and so we eventually had no choice but to apply for a certificate on your behalf, which you agreed to let us do.

To apply for the certificate on your behalf, we first were required to request a building permit. Since you never obtained a certificate of occupancy for the space after renovating the building in 2007, or when you leased it to us in 2011, the city is treating this as a “change of use” requiring detailed plans. The plans we initially submitted for that purpose needed to be reworked, largely because the city wanted to see more detail related to the fire code issues, including whether the building as a whole needs to be sprinkled. After many more hours of work, we recently submitted the updated plans pertaining only to our leased theater space, and the city has agreed with us that given our specific theater occupancy of less than 300, a sprinkler is not required for our space (see Attachment “C”—letter from Dave Heller). However, we understand from our architect that even though our use alone would not require a sprinkler, the occupancy load of the building as a whole likely requires a sprinkler system, particularly given the un-rated glass doors that exit into the common corridors of the building and exit the building itself. If that’s the case, that will of course be your responsibility since it involves the common areas of the building. You had mentioned before that you believe that the entire building is fire code compliant. Since that doesn’t seem to jibe with what we have learned, please let us know if you have anything confirming that the building is in compliance with all code requirements.

As you will recall, while this process was ongoing, the city threatened to shut us down through our last two productions. We made clear in our letter of December 3, 2015 that we would hold you responsible for any lost revenue stemming from the lack of a certificate of occupancy. We were able to hold both of those shows, through much dealing with the city and the involvement of our city councilman. But for our last production, given the lack of a certificate, the city imposed a “Fire Watch” on us. This involved paying \$260 per performance for a fire inspector to be onsite. We ran 23 shows, resulting in a loss to the theatre of \$5980. We are not aware of whether the city has looked into the many other spaces in the building that are being occupied without a certificate of occupancy - which include other assembly uses - or whether we are the only tenant that has been targeted so far.

Through this process, we have also been assessed two Sewer Access Charge units, at a total cost of \$4970. Please let us know if you ever had a SAC charge determination made when you took over the building and converted it to commercial uses. If not, any fees we are charged now would be your responsibility, to the extent that they would have been imposed if you had been assessed at that time based on the required number of toilets for the current use of the building according to code.

Again, if you had met your responsibilities many years ago to close out the building permits with proper final inspections, undergo a proper code review from the city, and obtain a

certificate of occupancy, we would be in a far different position today. As a result, this will confirm that we hold you in breach of our lease and liable for the following:

- The \$5980 we incurred for the “fire watch”;
- The value of the architectural, legal, engineering, and other services we have had to acquire due your failure to obtain a certificate of occupancy;
- Any SAC charges we incur that should have been covered when you acquired the building;
- Any lost revenue for performances that have been or will be cancelled due to the lack of a certificate or any code violations;
- Any costs we incur to correct any code violations related to the building as a whole or the common areas, including any fire sprinkler system or door replacements that are required;
- The excess utility charges noted in our letter of December 3; and
- The cost of the electricity illegally pulled from our roof HVAC unit, as also noted on our letter of December 3.

The fire watch alone closely matches the amount of our monthly rent. Therefore, we maintain that, at a minimum, the \$5980 should be deducted from the amount due for our next rent payment. This deduction will not resolve the other items listed above, but it is a start. We also reserve our right to pursue any other rights and remedies available to us.

Your failure to live up to the terms of our lease and meet city requirements, and the losses we have had to incur as a result, continue to threaten our very survival as a theatre. Thus, we will continue to hold you liable for any losses and damage to our business that result from your failure to meet your obligations.

Please let me know if you’d like to discuss any of these issues further.

Sincerely,



Jeremy D. Stanbary

cc: Dana Avery
Nes Rotstein, Board Member
Mark Blando, Board Member
Blong Yang, Councilman, Ward 5
Steve Poor, Director, Development Services
Dan Callahan, Plan Review Supervisor
David Heller, Plan Examiner
David Bond, Building Inspector

Attachment "A"

Property Address:

Property ID: 2702924220005

1313 Chestnut Ave W Minneapolis, MN 55403

REMODELING							
Issued	Type	Permit	Status	Value	Applicant	Cleared	Total
07/26/2007	BIRE	3048603	Done	10000.00	Space Unlimited Llc	N/A	\$351.58

Scope:

DEMISING INTERIOR WALLS AND CONSTRUCTING ONE HOUR FIRE RATED CORRIDOR. JXJ #1

CERTIFICATE OF OCCUPANCY REQUIRED: YES NO
 CONST TYPE: OCCUPANCY: 2000 IBC
 SPRINKLERED: YES NO SPRINKLER TYPE: NFPA 13 NFPA 13R
 FIRE ALARM: YES NO
 ELEVATOR REVIEW _____
 20% accessibility upgrades _____
 Tenant: Floor(s):

ARCHITECT: ENGINEER:

All roof drains, area drains, or other stormwater or clearwater connections to the City's sanitary sewer system must be disconnected per Chapter 56 of the Minneapolis Code of Ordinances. Contact Arvella Greenway at 612 673 5899 if you questions.

DATES		
Inspection Dates	Inspection Type	Result
11/6/2007	JOB STATUS	CHECK PROG
11/26/2007	JOB STATUS	CHECK PROG
9/22/2009	FINAL	CAN

FEES		
Fee Code	Description	Amount
BB01	BUILDING PERMIT	\$210.05
BB02	BUILDING PLAN REVIEW	\$136.53
BSUR	STATE SURCHARGE	\$5.00
		Total: \$351.58

Attachment "B"

Property Address:

1313 Chestnut Ave W Minneapolis, MN 55403

Property ID: 2702924220005

REMODELING							
Issued	Type	Permit	Status	Value	Applicant	Cleared	Total
07/31/2009	BIRE	3060181	Done	3000.00	Space Unlimited Llc	N/A	\$174.01

Scope:

INSTALL 9' X 4'-8" EXTERIOR CONCRETE STOOP ADJACENT TO EXISTING STAIR ENCLOSURE (DMH#2) AND REPLACE EXTERIOR DOOR. INSTALL FROST FOOTING PER ENGINEER DRAWINGS BY ERIC BUNKERS, P.E.#26490

Work completed or omitted in violation of the building code shall be corrected as directed by the building inspector.

Required Inspections:

Footing and foundation before placing concrete (If project involves pouring concrete);
 under floor and slab after all in-slab and underfloor items are in place;
 structural framing after all mechanical rough-ins are approved;
 insulation and vapor barrier prior to concealment;
 final inspection after all work completed.

DATES		
Inspection Dates	Inspection Type	Result
1/24/2011	FINAL	CAN

FEES		
Fee Code	Description	Amount
BB01	BUILDING PERMIT	\$104.55
BB02	BUILDING PLAN REVIEW	\$67.96
BSUR	STATE SURCHARGE	\$1.50
		Total: \$174.01

Attachment "C"



Community Planning and Economic Development
Construction Code Services
250 S. 4th St. - Room 300
Minneapolis, MN 55415
TEL 612.673.3000
www.minneapolismn.gov

March 31, 2016

Mr. Peter Kramer (via fax)
2929 4th Avenue South
Minneapolis, MN 55408

Re: Open Window Theatre
1313 Chestnut Ave, Minneapolis, MN

Dear Mr. Kramer:

This is in response to your letter of March 21st, 2016 regarding the above and the Fire Sprinkler issue.

Based on your notes and building code information provided, we agree a fire sprinkler is not required for the "Open Window Theatre". This is based on meeting the 2015 IBC parameters of less than 300 occupants and 12,000 sq. ft. Fire Area, but as long as proper fire separation is demonstrated in the Architects construction plans, meeting 2 hour fire separation walls and associated rated openings. We do have a concern of providing a continued protected exiting system from a 2 hour building, into an adjacent building having only a 1 hour ratings. Perhaps consideration for new fire rated walls and door locations within the Exit corridor system would improve protection.

During future review of this project, rated walls, doors, penetrations, exit and emergency lighting, and accessibility provisions should be addressed in the Architect plans and details, including structural approval of the audience seating system to be approved by an engineer. This letter and the items stated should not be construed as the Plan Review comment letter, or the only items of concern for this project.

Respectfully,

Dave Heller, Plan Examiner I
City of Minneapolis
250 South 4th Street, Rm 300
Minneapolis, MN 55415
612-673-3183
David.Heller@minneapolismn.gov

Cc: David Bond, Bldg. Inspector; Denise Sandberg, CCS Supervisor (via email)