EXHIBIT
67174/004

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16387 of Square 456 Associates, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 411.11 for a roof structure and a variance from Subsection 1706.22(g) to permit commercial development to proceed prior to the issuance of a certificate of occupancy for nonresidential development within the DD District until a certificate of occupancy is issued for affordable housing in a DD/C-4 District at premises 625-627 E Street, and 620 and 626 F Street, 501-507 and 511-517 7th Street, NW (Square 456, Lots 37, 39, 868 and 869).

HEARING DATE: September 2, 1998
DECISION DATE: September 2, 1998(Bench Decision)

SUMMARY ORDER

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commissions (ANC) 2C and 6A and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2C. ANC 2C which is automatically a party to this application, did not file a written statement regarding the application. However, three Commission members filed a joint letter in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR 411.11 and a variance from the strict application of the requirements of 11 DCMR 1706.22(g). No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met its burden of proof, pursuant to 11 DCMR 3108.1, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map, and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107.2, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted 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. The Board concludes

Board of Zoning Adjustment
District of Columbia
CASE NO.16387
EXHIBIT NO.24A2

that the applicant has met the requirements of Section 1706.22 pertaining to the provision of off-site housing, that the applicant may meet the preferred use requirements of the DD Regulations and utilize any of its incentives and bonuses in any manner permitted by said DD Regulations so long as the on-site housing is not decreased. It is therefore **ORDERED** that the application be **GRANTED** subject to the following **CONDITIONS:**

1. Within thirty days after the issuance of the Board's order, the applicant shall place $500,000 in an escrow account for the benefit of Golden Rule Plaza, Inc., to be made available to Golden Rule Plaza, Inc., at the time of settlement on the financing for the low and moderate income housing project to be constructed on the west side of New Jersey Avenue between New York Avenue and K Street. After placing the $500,000 in escrow, the applicant may proceed to construct and occupy the development in Square 456. In the event that the Golden Rule Plaza project has not settled on its financing and drawn down the funds in the escrow account within two years of the date of the Board's order, the applicant shall consult with the Office of Planning to determine an appropriate alternative plan as to how the funds will be used for affordable housing, and shall submit that plan to the Board in an appropriate motion. The submission of such an alternative plan in no manner affects the rights granted by this order enabling the applicant to proceed with the mixed-use development on the subject site.

2. The applicant may modify the design of the building subject to approval under D.C. Law 2-144, provided that those changes do not diminish the roof structure setbacks shown on the plans for which special exception relief is required, and may otherwise comply with the provision of preferred uses so long as all the requirements of the Zoning Regulations are met, provided that the applicant shall not reduce the amount of on-site housing which comprises 56,240 square feet of gross floor area as shown on the plans submitted to the Board.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: **3-0** (Sheila Cross Reid, Betty King, and Anthony J. Hood to grant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Tracey W. Rose
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

FINAL DATE OF ORDER: DEC - 3 1998

PURSUANT TO D.C. CODE § 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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 BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

SO/16387/POH

EXHIBIT D - Combined Lot Development Covenant
Preferred Uses Analysis

Site Area/FAR			
Lot**	SF	FAR	FAR Feet
Lot 878 and part of Lot 880	51,464	10	514,638
Part of Lot 880	28,775	6	172,650
Lot 41	9,361	6	56,166
Total Available	**89,600**		**743,454**

Project FAR	
Office/Retail	**GSF**
Hechts/GOF/New West (Carr - Lot 880)	459,501
New East (G&R - Lot 878)	222,500
Residential/Retail (Lot 41)	
Residential FAR	56,303
Arts Retail @ Murray and Insect Club	5,150
Total GSF/Project FAR	**743,454**

** Lot 878 (21,259sf) is the eastern portion of former Lot 869 which had a 10.0 FAR.
Lot 880 (58,980sf) includes the western portion of former Lot 869 (30,205sf)
and all of former Lot 868 (28,775sf) which had a 6.0 FAR.
Lot 41 is the consolidation of former Lots 37 and 39 which each had a 6.0 FAR.

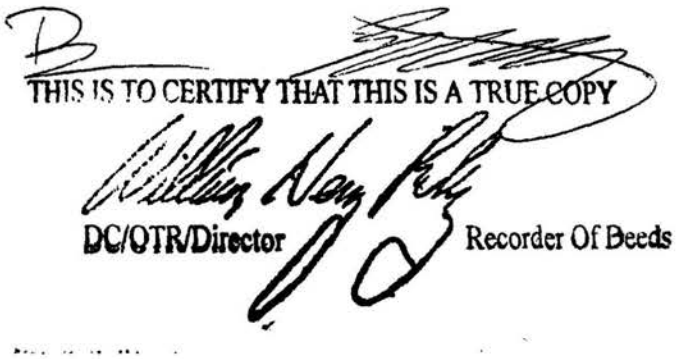
HOUSING	
Housing Requirement	
2 FAR (on Lot 878 + part of Lot 880 only, totaling 51,464sf;	102,928
6 FAR lots are exempt)	
Adjustments	
.8 FAR For Affordable Housing Contribution	(41,171)
.1 FAR from On-Site Bonus Density (Arts)	(5,454)
Total On-Site Housing Requirement	**56,303**

Achieved Housing	
Murray/Insect Club	56,303

ARTS	
Arts Requirement	
1 FAR or	89,600
.5 FAR with 1704.3(a) uses	44,800
Total Requirement	**44,800**
Preferred Arts Allocation w/ >12' ceilings (GSF)*	
Hechts/GOF(incl. B-1) (19,209.3 sf x 1.5 FAR)	28,814
Murray and Insect Club (incl. B-1) (8979 sf x 1.5 FAR)	13,469
Preferred Arts Allocation w/ <12' ceilings (GSF)	
New West	2,520
Total GSF provided	**44,802**

EXHIBIT E

TO BE PROVIDED IN CONSULTATION
WITH D.C. GOVERNMENT


THIS IS TO CERTIFY THAT THIS IS A TRUE COPY
DC/OTR/Director
Recorder Of Deeds

27 AUG 2007



Outline of Testimony
Robert Carr
CarrAmerica Urban Development, Inc.

I. Introduction

II. History of Site

III. Coordination with the City

IV. Coordination with the Shakespeare Theater

V. Need for Relief from Arts Requirement

VI. Conclusion

OUTLINE OF TESTIMONY
NICHOLAS T. GOLDSBOROUGH
SHAKESPEARE THEATER

I. Introduction

II. Expansion Needs of the Shakespeare Theater

III. Coordination with the City

- A. Grant Money
- B. Downtown Theater Spine
- C. Theater's Association with Downtown

IV. Funding Needs and Timing for Completion

V. Conclusions

OUTLINE OF TESTIMONY OF
REPRESENTATIVE OF SMITH GROUP ARCHITECTS

I. Introduction

II. Square 456 Development

III. Allocation of Uses

- A. Arts and Retail
- B. Preferred Arts
- C. Housing
- D. Historic Preservation Issues

IV. Shakespeare Theater Development

V. Proposed Allocation of Uses Under Requested Relief

VI. Unique Features of Existing Structures

- A. Suited for Theater Space
- B. Arcade

VII. Conclusions

OUTLINE OF TESTIMONY
OF CHRISTOPHER REUTERSHAN, CONCORD PARTNERS

I. Introduction

II. Association with Shakespeare Theater

III. Theater Requirements

IV. Features of Square 456 Uniquely Suited to Theater Development

V. Conclusions

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Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 16959
675 E Street, 575 7th Street and 650 F Street, N.W.
(Square 456)

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP

December 17, 2002

I. Site location and description

A. Location

1. Square bounded by 6th, 7th, E and F Streets, N.W.

2. Site includes the entire square except for the OBA Federal Building at 600 F Street, the AARP building at 601 E Street and the restaurant building at 509 7th Street

3. Project site consists of lots 41, 878 and 880 in Square 456

B. Size

1. Total site area is approximately 89,600 square feet

2. Site is comprised of two parts

   a. Residential building at 675 E Street, at the northeast corner of the intersection of 7th and E Streets (Lot 41)

      (1) Site has 75 feet of frontage on 7th Street and approximately 120 feet of frontage on E Street

      (2) Site also fronts on twenty foot wide alley to the east

   b. Office/retail building at 575 7th Street, 650 F Street and additional building to be constructed (lots 878 and 880), with frontage of approximately 224 feet on 7th Street and 454 feet on F Street

B. Existing site conditions

   1. Improved with 2 buildings, currently under construction

   2. Residential building includes reconstruction and addition to building located at 501-507 7th Street, known as the Dime Savings Building or Murray Building

   3. Office building includes reconstruction and addition to the former Hecht Company department store building at 620-626 F Street and the façades of four adjoining buildings at 511-517 7th Street

II. Description of surrounding area

A. Penn Quarter/Gallery Place area

B. Area contains broad mix of uses and building types

C. Remainder of Square 456

   1. On the east side of 7th Street north of E Street – 5 story commercial building occupied by the District Chop House

   2. At the northwest corner of the intersection of 6th and E Streets– 10 story office building occupied by AARP

   3. At the southwest corner of 6th and F Streets – 5 story office building occupied by OBA Federal

D. Uses to the south in Square 457 (bounded by 6th, 7th D and E Streets)

1. Development site owned by GSA (formerly owned by PADC) under construction with a large apartment house project

2. Large office buildings

E. Uses to the east in Square 488 (bounded by 5th, 6th, E and F Streets)

1. D.C. fire station

2. New office building for the National Academy of Sciences (approved as a planned unit development)

F. Uses to the North in Squares 454 and 455 (bounded by 6th, 7th, F and H Streets)

1. MCI Center

2. Development site for Gallery Place project (under construction)

3. Small commercial buildings along H and 6th Streets, many occupied by Chinese businesses

G. Use to the west in Square 430, (bounded by 7th, 8th, E and F Streets): General Post Office (Tariff Commission building) now converted to the Hotel Monaco

III. Existing zoning: C-4

A. Uses (§§750 – 754)

1. Commercial use permitted as a matter-of-right, including retail, service and office use

2. Hotel

3. Residential use permitted as a carry-over from the Special Purpose and Residential Districts

B. Height - maximum of 110 feet (§770.1)

C. Density - maximum of 8.5 FAR (§771.2)

D. Lot occupancy – 100% permitted (§772.1)

E. Residential recreation space - minimum area equal to 5% of the gross floor area devoted to residential use (§773.3)

F. Rear yard – 2 ½ inches per foot of height but not less than 12 feet (§774.1)

G. Side yard - not required (§775.5)

H. Parking (§2101.1)

1. For apartment house use, minimum of one space for each four units

2. For office use, none required on a lot less than 10,000 square feet in area

3. No parking required for an addition to a contributing building in a historic district

I. Downtown Development (DD) Overlay District

1. Applies to new buildings and alterations or additions to existing buildings involving more than 100 percent of assessed value of building in any twelve month period

2. Height is maximum permitted under the Act of 1910 (110/120 feet for subject site)

3. Downtown Arts District

a. Minimum of 1.0 FAR equivalent required to be devoted to retail, service, arts or entertainment uses, of which at least 0.25 FAR equivalent must be devoted to specified uses from ¶1704.3(a)

b. Alternatively, can provide 0.5 FAR equivalent of uses from ¶1704.3(a)

4. Housing Priority Area C

a. Maximum FAR is 10.0

b. Minimum of 2.0 FAR <u>required</u> to be devoted to residential use (8.0 FAR available for commercial)

c. With purchase of TDRs, allowable on-site FAR is 10.5

5. Historic District

a. Limited to average of 6.0 FAR on-site

b. No rear yard required

6. Combined lot development: allows use and density requirements to be satisfied on separate lots as if the lots were a single lot

IV. Proposed development

A. Use – mixed use project in two buildings currently under construction:

1. Apartment house with ground floor and cellar level preferred arts/retail space

2. Office building with ground floor and cellar level preferred arts/retail space

B. Gross floor area of approximately 743,454 square feet

1. A total of 687,151 square feet for office, retail and arts use

2. 56,303 square feet for residential use

C. Height - overall maximum height is 120 feet

D. Combined lot development allocates residential and arts requirement

V. Relief required: variance from the Arts District subarea requirements of §1704.3 to allow a contribution to the Shakespeare Theater for a potential new theater in the eastern end of the office building in lieu of providing other required arts/retail uses

VI. Standards for a variance (§3103.2)

A. Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,

B. the strict application of any regulation adopted under D.C. Code §§5-413 to 4-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship;

C. Provided, that the relief can be granted 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.

VII. Compliance with the variance standards

A. Exceptional or extraordinary situation or condition

1. Application of requirements of three subareas of the DD District (arts, housing and historic)

2. Expansion of Shakespeare Theater is constrained by lack of available sites in proximity to current location

3. District of Columbia has awarded a $20 million grant to the Theater to facilitate its location on this specific site

4. Existence of contributing buildings to the Downtown Historic District that cannot be removed

5. Development of multi-phased building on larger record lot, including the AARP building constructed prior to the adoption of the DD District, and two buildings now under construction which met the DD District requirements with BZA relief

B. Practical difficulty

1. Existing combined lot development covenant allocates arts uses to portions of the building now under construction

2. Inclusion of theater in space not now encumbered with arts requirement will result in substantial excess of arts uses, more than three times the minimum required

3. Theater is inefficient use of space because of volume and structural implications for building above

4. Layout of first floor space to accommodate both theater and office lobbies and arcade connection to AARP building

C. No detriment to the public good

1. Inclusion of additional space for Shakespeare Theater is a substantial benefit to the District, having a greater positive impact on the arts goals than smaller, scattered arts space

2. Applicants will contribute $1.5 million to the Theater to assist in relocation

3. Conditions can be imposed to recapture other arts space over time if theater does not proceed

VIII. Conclusions

A. Subject property is affected by exceptional conditions, because of the combined requirements of the DD Regulations, the existence of buildings which contribute to the character of the historic district, the grant awarded to the Shakespeare Theater for the subject site and the proximity of the site to the Theater's other existing location

B. Strict application of the Regulations would require that the arts space now under construction be kept while undertaking substantial and significant expense to include a theater in future construction not now required to have arts uses

C. The variances can be granted without substantial detriment to the goals of the DD District

D. Approval of the application, allowing the Applicants to help leverage a new theater, would be a significant contribution to city policy of encouraging arts uses in this part of Downtown

E. The application should be granted