GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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MEMORANDUM

DATE: December 12, 2002

TO: District of Columbia Board of Zoning Adjustment

THROUGH: Andrew Altman, Director OP
Ellen McCarthy, Deputy Director OP

FROM: David J. McGettigan, AICP

SUBJECT: Board of Zoning Adjustment Case No. 16959
675 E Street, LLC and 575 7th Street, LLC and Galapagos 456 LLC
501-507 7th Street and 511-517 7th Street, NW and 620, 626 F Street
Square 456 Lot 41 and Square 456 Lot 880 and Square 456 Lot 878

Summary

The applicants seek relief from the requirements of §1704.3 to reduce the requirement for arts and entertainment-related uses. The applicant is willing to condition approval on a monetary contribution to the Shakespeare Theater. The subject properties lie in the Downtown Arts District in the DD/C-4 zone.

Recommendation:
The Office of Planning recommends the case be approved based on the following findings:

- The applicant has met the burden of proof for a variance, as there is an exceptional situation that creates a practical difficulty.
- The variance will not be a substantial detriment to the public good or the intent of the Zoning Regulations.

BZA
Case No. 16959
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.25

Background

The applicants, 675 E Street, LLC, 575 7th Street, LLC and Galapagos 456 LLC, own 501-507 7th Street, NW, 511-517 7th Street, NW and 620, 626 F Street, NW (Square 456 Lot 41, Square 456 Lot 880 and Square 456 Lot 878). The properties lie in the DD/C-4 Zoning District and contain 9,361 square feet, 21,259 square feet, and 58,980 square feet of land respectively. These lots, most of which contain historic structures, are being redeveloped with a mixture of commercial, residential, retail and arts related uses.

Project Description

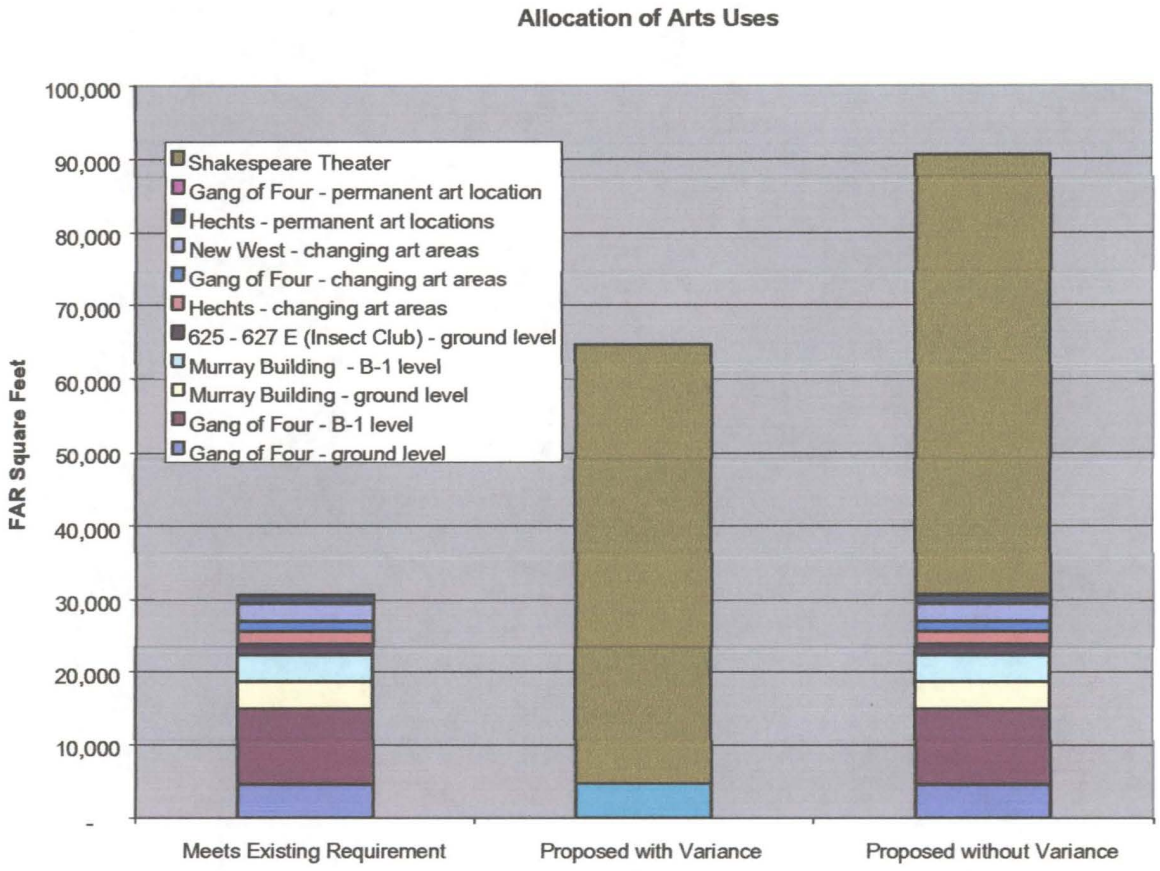
The applicants propose to provide a new space for the Shakespeare Theater, a qualifying use to meet the use requirements of §1703. A portion of the area within the buildings on lots 41 and 880 currently reserved for arts related use would be changed to retail use and the Shakespeare Theater would meet the unfulfilled arts requirements on lot 878. However, because buildings are currently under construction on lots 41 and 880 with occupancy expected in 2003 and the Shakespeare Theater would not be occupied until 2006 the normal remedy of a combined lot transaction could not provide a feasible solution.

The applicant proposes conditions be placed on the variance with the following provisions:

1. The applicant shall provide the zoning equivalent of 7,000 square feet of floor area for arts and entertainment-related uses in the Terrell Place development on Lots 880 and 41 in Square 456.
2. The applicant will place $1.5 million in escrow for the Shakespeare Theater dependent of the Theater's successful purchase and commencement of construction for the development of the new Theater on Lot 878.
3. Upon completion of the new theater, the arts requirements for the combined lot development would be satisfied through a new covenant on Lot 878.
4. If the new theater is not commenced to satisfy this requirement, the applicant will restore within twelve months after notification from the District of Columbia 30% of the total required arts space , or the zoning equivalent of approximately 15,000 square feet on Lots 41 and 880. Thereafter, the applicant will return the balance of the basement and first floor space presently identified on the plans submitted with the BZA application for arts space to required arts uses as the commercial leases for the designated arts space expire.
5. Until such time as the Shakespeare Theater commences construction, the applicant [proposes to] shall limit commercial lease terms to ten years with a maximum of two 5-year extensions to ensure that the preferred arts uses would return to Lots 41 and 880 development within a specified maximum time period.
6. If the Shakespeare Theater does not commence construction by December 31, 2004, the $1.5 million escrow would be returned to the Owners. In the alternative, at the option of the District, the $1.5 million will be transferred to the Cultural

downtown sector instead of restoring arts uses to Lots 41 and 880.

The amount and location of arts uses that could occur is depicted in the chart below:



The last column shows that without the requested variance almost three times the required arts space would be provided.

Zoning

The arts and entertainment-related use requirement is provided for in §1704.3:

1704.3 Each new or altered building shall devote not less than 1.0 FAR equivalent to arts and entertainment-related uses from §1711 and retail and service uses from §1710; Provided that the following requirements are met:

(a) Not less than 0.25 FAR equivalent of the required space shall be devoted to one or more of the following uses: art center, art exhibition area, art gallery, art school, artist live-work space, artist studio, performing arts space, cabaret, dance hall, dinner theater, legitimate theater, movie theater, museum, or television and radio broadcast studio;

(b) A building may comply with requirements of this subsection by devoting 0.5 FAR equivalent to uses listed in paragraph (a) , in which case the 1.0 FAR equivalent of total preferred uses is not required, and bonus density is earned in excess of the 0.5 FAR equivalent of uses from paragraph (a);

(c) A building that provides 1.5 FAR or more of residential uses shall have a reduced

(c) A building that provides 1.5 FAR or more of residential uses shall have a reduced requirement of 0.5 FAR equivalent of preferred uses from §§1710 and 1711, of which no less than fifty percent (50%) shall be §1711 uses;
(d) Squares located in both the Arts District as delineated in the Comprehensive Plan and the SHOP District shall be subject to the arts and retail provisions of §1703, SHOP District, as specifically provided in Paragraph 1703.3(d); and
(e) A building located on a lot of 5,000 square feet (5,000 ft.') or less and having a height of six (6) floors or less at and above grade shall have a preferred use requirement of not less than 0.75 FAR equivalent of uses from §§1710 and 1711 combined, and shall not have a residential use requirement as provided in §1706.

Lots 41 and 880 is required, through its current combined lot covenant to provide 44,800 square feet of preferred arts space (i.e., for those uses listed in §1704.3(a)).

Analysis

Extraordinary or Exceptional Situation

In accordance with §3103.2, which gives the Board the authority to grant a variance if by reason of exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, a variance from the strict application so as to relieve the difficulties or hardship may be granted by the BZA

The applicant lists three main elements in its pre-hearing statement that create an exceptional situation.

1) The site is burdened by a complex set of zoning and historic preservation regulations; and,
2) The relationship of the site to the other structures and properties on the square, both physically and through Combined Lot covenants; and,
3) The fact that buildings are currently under construction.

While neither of these conditions would be exceptional by themselves, OP concludes that the combination of those conditions does constitute an extraordinary or exceptional situation.

Regarding the first element, the applicant notes that the property is the only property located in three different sub-areas of the Downtown Development District: the Downtown Arts District (§1704.2), the Residential and Mixed Use Development District (§1706.6) and the Historic Preservation District (§1707.4(w)). This creates a complex set of regulations on the site.

The close proximity of Square 456 to the Shakespeare Theater's Lansburgh Building and the size and availability of Lot 878 make this location unique and eminently suitable for Shakespeare Theater. In addition, the District of Columbia has provided Shakespeare a $19.7 million grant to build a new theater at this location.

Finally, the fact that the developers of Lots 41 and 880 are currently in the construction process and therefore need to go forward with lease of the identified arts space, creates an exceptional situation leading directly to the practical difficulties in meeting the Appplicant's preferred use requirements without zoning flexibility.

Practical Difficulty

In its pre-hearing statement, the applicant indicates that the practical difficulty arising from the exceptional situation is such that, if relief is not granted, Square 456 may end up providing almost three times the amount of preferred arts space, a disproportionate burden for the Square. Due to the disparity in timing of completion of Lots 41 and 880 and Shakespeare Theater, a combined-lot transaction, which would normally allow the transfer of arts requirement, cannot be completed. The granting of relief from the strict application of the zoning regulations permits this transaction to be postponed until such time as Shakespeare's acquisition and development of the property is complete.

Substantial Detriment

In addition to the above test, §3103.2 further requires that the relief requested could be granted, provided that it will not be a substantial detriment to the public good or substantially impair the intent, purpose and integrity of the zone plan. The application provides two points that address this:

1) The proposed Shakespeare Theater project is an important element in achieving the goals of the Comprehensive Plan for a vibrant and successful Arts District as a key component of the Living Downtown. The importance accorded to this use is evidenced by the significant financial contribution provided by the District;
2) The proposed variance with the conditions proposed (with minor modifications) will ensure that the intended arts requirement for the Square is provided.

The applicant's proposal is a win-win scenario, assuming the Shakespeare Theater project succeeds. The Downtown Arts District will get some functional and lively arts space and Lots 41 and 880 will get to replace its arts requirement with more profitable retail space. If the Shakespeare Theater doesn't go forward, the Downtown Arts District will still get some arts space immediately, and more as the commercial leases run their course.

In addition, the applicant is looking for relief from its arts requirement in order to replace a substantial portion of what would have been arts space with ground level retail along 7th Street. That also meets important goals of the Comprehensive Plan for retail at the ground floor in the Downtown. The District is providing 70+ million dollars in TIF funds to subsidize the Gallery Place project (a mixed use project with retail, movie theaters and housing) one block north of this project. The MCI Center is in between the two, which is a major generator of pedestrian traffic. Including retail along the 7th Street façade will contribute to a continuous retail and arts street presence along that street, taking full advantage of the potential customers generated by MCI and Gallery Place.

ANC Recommendation

ANC 2C voted unanimously to support the application.

Recommendation

The Office of Planning recognizes the value of the Shakespeare Theater in the District and supports efforts to retain and expand its presence in the Downtown Arts District. In addition, the conversion of the slated arts space in Lots 41 and 880 to retail would contribute to achieving Comprehensive Plan goals for the area, and still provide for for a vibrant street. The Office of Planning recommends that BZA application 16945 be approved with slight changes in the conditions proposed by the applicant. These conditions are essential to preventing harm to the public good and the zone plan as they ensure that the arts requirement is provided in some form. (Underlining and strikeouts indicate changes proposed by OP to the conditions originally suggested by the applicant. The applicant has agreed to these changes.)

1. The applicant shall provide the zoning equivalent of 7,000 square feet of floor area for arts and entertainment-related uses in the Terrell Place development on Lots 880 and 41 in Square 456.
2. The applicant will replace any ground-level street front spaces previously planned for arts with retail.
3. The applicant will place $1.5 million in escrow for the Shakespeare Theater dependent upon the Theater's successful purchase and commencement of construction for the development of the new Theater on Lot 878.
4. Upon completion of the new theater, the arts requirements for the combined lot development would be satisfied through a new covenant on Lot 878.
5. If the new theater is not commenced to satisfy this requirement, the applicant will restore within twelve months after notification from the District of Columbia 30% of the total required arts space, or the zoning equivalent of approximately 15,000 square feet on Lots 41 and 880. Thereafter, the applicant will return the balance of the basement and first floor space presently identified on the plans submitted with the BZA application for arts space to required arts uses as the commercial leases for the designated arts space expire.
6. Until such time as the Shakespeare Theater commences construction, the applicant ~~[proposes to]~~ shall limit commercial lease terms to ten years with a maximum of two 5-year extensions to ensure that all arts uses required for Square 456 will be provided ~~the preferred arts uses would return to Lots 41 and 880 development~~ within ~~a specified~~ that maximum time period. If the retail tenants terminate their leases for any purpose prior to that time, the space will immediately revert to arts use.
7. If the Shakespeare Theater does not commence construction by December 31, 2004, the $1.5 million escrow would at the option of the Office of Planning, either be directed specifically to an potential arts user for tenant improvements or other expenses to close funding gaps necessary to enable the arts user to proceed, or be transferred to the Cultural Development Corporation for use in the development of different arts space in the downtown sector. Alternatively, the Office of Planning could return the $1.5 million to the developer, when the arts space requirement is satisfied on site.