Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

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December 27, 2002

MARY CAROLYN BROWN
(202) 862-5990
mcbrown@hklaw.com

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D.C. OFFICE OF ZONING
2002 DEC 27 PM 3:29

VIA HAND DELIVERY

Board of Zoning Adjustment for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Application No. 16959
Proposed Order with Conditions

Dear Members of the Board:

On behalf of the Applicant in the above-referenced case, enclosed please find a copy of our proposed order with conditions. We have consulted with the Office of Planning ("OP") on the proposed conditions and OP has given its preliminary concurrence with them. However, because certain OP members have been out of town during this holiday week and were unable to review the conditions, OP may submit addition comments to the Board separately next week.

Thank you for your consideration of this submission.

Respectfully submitted,

Carolyn Brown

cc: David McGettigan, OP (w/encl., by fax)
ANC 2C (w/encl.)

BZA
Case No. 16959
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.34

DRAFT

Application No. 16959 of 575 7th Street, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the area requirements for arts and entertainment-related uses under subsection 1704.3(a), to allow a contribution to the Shakespeare Theatre in lieu of providing arts uses on-site in the DD/C-4 District at premises 625-27 E Street, N.W., 620 and 626 F Street, N.W., and 501-07 and 511-17 7th Street, N.W. (Square 456, Lots 41, 880, and 878).

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HEARING DATE: **December 17, 2002**
DECISION DATE: **January 7, 2003**

SUMMARY ORDER

SELF CERTIFICATION

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 Commission (ANC) 2C and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 2C, which is automatically a party to this application. The Board waived the requirements of section 3115.1 and accepted out of time the report of the ANC in support of the application. The D.C. Office of Planning generally testified in support of the application as presented by the Applicant and recommended conditional approval of the application.

As directed by 11 DCMR §3119.2, the Board has required the Applicant to satisfy the burden of proving the elements which are necessary to establish the case pursuant to §3103.2 for an area variance pursuant to §1704.3(a). No persons or entities appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §3103.2, 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.

Pursuant to 11 DCMR § 3101.6 the Board has determined to waive the requirement of 11 DCMR § 3125.3 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 appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED, with the following provisions and conditions:**

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. To satisfy the balance of the arts requirement allocated to Lots 880, 878 and 41, the applicant will place $1.5 million in escrow for the benefit of The Shakespeare Theatre and consistent with Condition No. 5.

3. Upon issuance of a building permit for the shell space of the Shakespeare Theater facility on Lot 878, the $1.5 million will be released to the Shakespeare Theater. On or before the date the payment is transferred to the theater, the Combined Lot Development Covenant shall be amended to reflect that the arts requirements for Lots 41, 880 and 878 shall be satisfied entirely on Lot 878.

4. The applicant may replace with retail uses any ground-level street front spaces previously planned for arts uses, as reflected on the plans submitted with the BZA application (the "Designated Arts Space"). Until such time as the arts requirements are satisfied consistent with Condition No. 3 of this order or are otherwise satisfied consistent with Condition No. 5 of this order, the applicant shall limit the retail lease terms for the Designated Arts Space to ten years with a maximum of two 5-year extensions.

5. If the arts requirements are not satisfied consistent with Condition No.3 of this order by December 31, 2004, or such later time as the Board permits, the Office of Planning will direct the $1.5 million escrow to be paid in one of the following manners in satisfaction of the arts requirement for Lots 880, 878 and 41:

   a) to a specific potential arts user in an alternative location in the Downtown Development District for tenant improvements or other expenses to close funding gaps necessary to enable the arts user to proceed; or

   b) to the Cultural Development Corporation for use in the development of different arts space in the Downtown Development District; or

   c) to the Applicant, as specified herein. The balance of the arts requirement will revert back to the Terrell Place development on Lots 880 and 41. Within twelve months after notification from the Office of Planning that this option has been selected, the applicant will restore 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 Designated Arts Space to required arts uses as the retail leases for the Designated Arts Space expire. The $1.5 million escrow will be disbursed to the Applicant in pro rata installments upon receipt of Applicant's certification that a stated portion of the arts space is then available for or has been occupied by an arts user.

VOTE: _____ (Geoffrey H. Griffis, David A. Zaidain, Peter May and Curtis L. Etherly, Jr. to _____; Anne M. Renshaw not present, not voting.)

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

ATTESTED BY: _____
Jerrily R. Kress, FAIA
Director

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 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 FOR 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.