BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION NO. 16959

MOTION FOR MINOR MODIFICATION
OF PLANS AND CONDITION NO. 1 OF THE BZA ORDER

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
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I. Summary

The Applicants request that the Board approve a revised plan and a minor modification to Condition No. 1 of the Order in the above-referenced application to specify that the 7,000 square foot equivalent of arts uses required on Lots 880 and 41 in Square 456 be provided only on Lot 41.

II. Background

The property which is the subject of Application No. 16959 includes lots 880, 878 and 41 in Square 456, which is bounded by 6th, 7th E and F Streets, N.W. The overall project is known as Terrell Place. Lot 41 is located at the northeast corner of 7th and E Streets (675 E Street) and is improved with a residential building with arts and retail uses on the ground floor and B-1 level. Lot 41 has further been divided into a series of air rights (7000 series) lots and condominium (2000 series) lots. Lot 880 is located at the southeast corner of 7th and F Streets (575 7th Street) and is improved with an office building with ground floor retail and service uses. Lot 878 is located on the south side of F Street east of the 575 7th Street building. Lot 878 is currently vacant and is proposed to be improved with a building to house a new theater for the Shakespeare Theater as well as independent office uses.

The subject property is located in a DD/C-4 District. Under the Downtown Development District, the property is subject to requirements for preferred uses, including residential and arts uses, and to restrictions in on-site density under the historic preservation section. The Board has granted relief from a number of provisions of the Regulations to allow the development to proceed.

In Application No. 16959, the owners of the property requested a variance from the arts and entertainment requirements of §1704.3(a) to allow the Applicants to make a contribution to the Shakespeare Theater in lieu of providing preferred arts uses on-site. By Order dated January 29, 2003, the Board granted the Application subject to a series of conditions describing how the arts use requirement was to be satisfied. A copy of the Order is attached as Exhibit A.

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.40

Case No. 16959
Exhibit No. 40

III. Nature of Relief Requested

The Applicants now request the Board to grant a minor modification to Condition No. 1 of BZA Order No. 16959. This request is made pursuant to the provisions of §3129 of the Zoning Regulations. The Applicants further request the Board to grant a waiver from the provisions of §3129.3 since this request is being made more than six months after the final date of the Order approving the Application.

IV. Waiver of the Six Month Limit

The Applicants have proceeded with development of the subject property on a phased basis. One phase involves the renovation and construction of additions to the existing buildings at the corner of 7th and E Streets for residential use. That building has been completed as a condominium project and is finished and occupied. Another phase involves the commercial building at the corner of 7th and F Streets, which included renovation of the old Hecht's department store building, the preservation of the facades of the four buildings to the south and the construction of a substantial office addition behind the facades and to the east of Hecht's. That building is also finished and occupied. It is not part of the condominium which comprises the residential building and is separately owned. The last phase involves the construction of a new building to house a theater and offices, which will be owned by two other entities.

Application No. 16959 addressed the allocation of arts uses throughout the project. It was only during the construction and financing of the first two phases that the owners and lenders of the various phases have come upon issues regarding the distribution of arts uses which were not and which could not have been foreseen when the BZA order was issued or within six months of that date. The requested modification, as described below, is so minor that a waiver of the rules would have no discernible effect on the Board's approval and would not adversely effect the right of any party. It is the Applicants' understanding that both the Office of Planning and all four members of Advisory Neighborhood Commission 2C, including the Chairman and the affected Single Member District Representative, support or have no objection to the requested modification.

V. Description of the Modification

The Applicants request a minor modification of Condition No. 1 of Order No. 16959, which presently reads as follows:

"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."

The applicant requests the Board to revise said Condition to eliminate the reference to Lot 880 so that the condition would read as follows:

"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 7000, 7004, 7009, 7010 and 7012 (part of Lot 41) in Square 456."

This minor modification of the provision of the Board's Order will clarify that all of the 7,000 square foot equivalent of arts use is to be provided on the specified portions of Lot 41. The plans attached as Exhibit B depict the location of the 7,000 square foot equivalent of arts use in the building located on Lot 41 in Square 456. The plans further show that none of the required arts space is to be located on Lot 880 or on the remaining portions of Lot 41.

VI. Rationale for the Request

At the time that the Application was before the Board, the Office of Planning recommended that the equivalent of 7,000 square feet of floor area be provided on the two lots but the ownership entities had not determined the actual distribution of those arts uses. Pending the final outcome of the Shakespeare Theater's ability to move forward with the theater building, Condition No. 1 of the Order requires that the equivalent of 7,000 square feet of arts uses be located in the 575 7th Street building (Lot 880) and the 675 E Street building (Lot 41). The owners of those buildings have now jointly determined that all of the required arts uses will be placed in the 675 E Street building, and the plans attached to this request identify that space.

The proposed modification is requested in order to avoid any misunderstanding in the future as to enforcement or as to which part of the overall project is obligated to provide the arts space. Approval of the modification will allow the $1.5 million to be posted in escrow for the Shakespeare Theater as specified in Condition No. 2. As set forth in the letter from the Office of Planning, attached as Exhibit C, the intent of the Office of Planning in proposing and the Applicants in agreeing to Condition No. 1 was that the 7,000 square foot equivalent of arts space could be provided on either Lots 41 or 880, in whole or

in part on either or both lots. Given that all of the arts space is allocated to the specified air rights lots on Lot 41, the Applicants request that the condition be revised so that it is clear that Lot 880 and the remainder of Lot 41 are not burdened by the arts requirement of Condition No. 1. The Applicants are not aware of any adverse affect which could occur as the result of the granting of the requested minor modification and clarification.

VII. Government and Community Response

It is the Applicants' understanding that the Office of Planning is in support of the requested minor modification and that all four members of Advisory Neighborhood Commission 2C, including the Chairman and the SMD representative for this site, support or have no objection to the requested minor modification.

VIII. Conclusion

The Applicants therefore respectfully requested that the Board waive the Rules and grant the requested the minor modification so that the escrow account for the Shakespeare Theatre project can be created and funded and that the last phase of this important project can move forward.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: _____
Norman M. Glasgow, Jr.

_____
Steven E. Sher
Director of Zoning and Land Use Services

Suite 100
2099 Pennsylvania Avenue, N.W.
Washington D.C. 20006
202-955-3000
June 28, 2004

Attachments

cc: Jennifer Steingasser, D.C. Office of Planning
ANC 2C

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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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).

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

SUMMARY ORDER

SELF-CERTIFIED

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 (OP) 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 OP and 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, subject to the following 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, 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: **4-0-I** (Geoffrey H. Griffis, David A. Zaidain, and Curtis L. Etherly, Jr. to approve with conditions; Peter G. May to approve with conditions by absentee vote; Anne M. Renshaw not voting not having participated in the case)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JAN 29 2003

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."

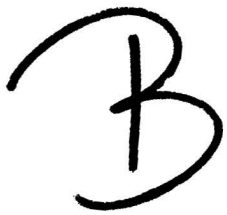
THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

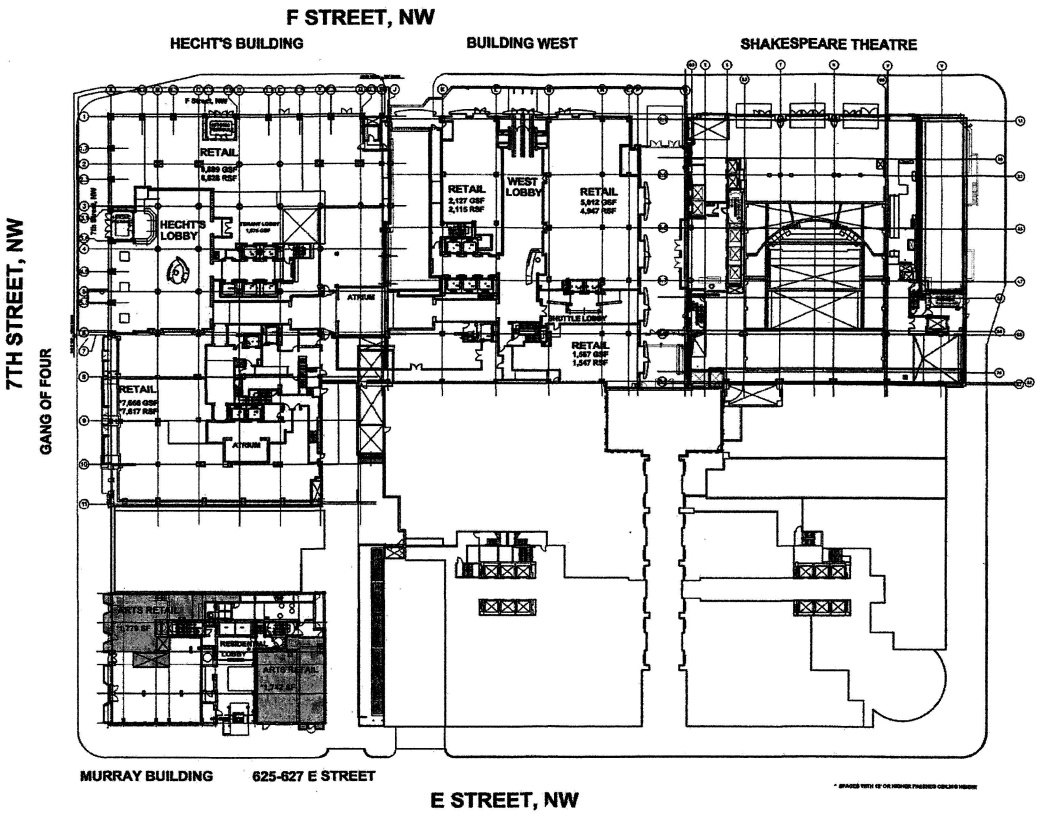
PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF

ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

rsn





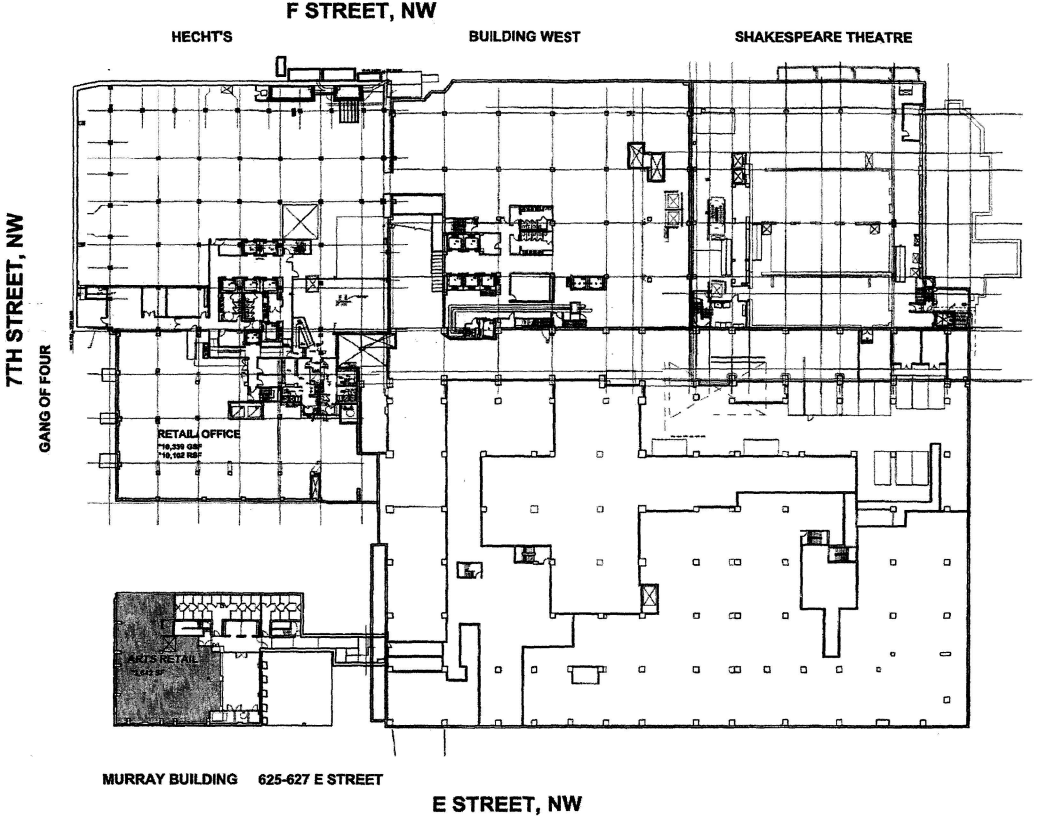
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AT
SQUARE 456
WASHINGTON, DC

CarrAmerica

SmithGroup

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& FIRST FLOOR AARP
FLOOR PLAN
COMPOSITE

A2-01



575
7th STREET, N.W.
AT
SQUARE 456
WASHINGTON, DC

CarrAmerica

SmithGroup

B1 LEVEL COMPOSITE FLOOR PLAN

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

June 22, 2004

Ms. Margaret C.H. Huckabee
Senior Vice-President
CarrAmerica Urban Development
1850 K Street, NW Suite 500
Washington, DC 20006

Re: Square 456 – Allocation of portions of the arts requirement

Dear Ms. Huckabee:

The Office of Planning (OP) has reviewed your proposed commitment to meet the 7,000 square feet of required arts uses as represented in Condition 1 of the Board of Zoning Adjustment (BZA) Order 16959, solely on Lot 41, Square 456 for the Terrell Place development in Square 456. OP has no objection to the proposal to use the following Air Rights lots for meeting such requirement:

Air Rights Lot 1 (lot 7000) with a floor area of 3,642 square feet
Air Rights Lot 5 (lot 7004) with a floor area of 5 square feet
Air Rights Lot 10 (lot 7009) with a floor area of 1,314 square feet
Air Rights Lot 11 (lot 7010) with a floor area of 460 square feet
Air Rights Lot 13 (lot 7012) with a floor area of 1,742 square feet

The Office of Planning believes that providing the full 7,000 square feet of required arts uses on Lot 41 of Square 456 meets the intent and requirements of the BZA order and is sufficiently enforceable against Lot 41.

This report should not be interpreted to represent any waiver or amendment to any other zoning or arts-use requirement or the Board of Zoning Appeals Order number 16959.

We look forward to the completion of Terrell Place which promises to be a vibrant project adding to the city's downtown and arts community. If you have any question please feel free to call me at 202-442-7635 or Jennifer Steingasser at 202-442-8808.

Sincerely,

Jennifer L. Steingasser for

Ellen M. McCarthy
Deputy Director for Development Review, Historic Preservation and Neighborhood Planning