GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16959-A 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**
MODIFICATION DECISION DATE:	**August 3, 2004**

MINOR MODIFICATION ORDER

Note: On June 29, 2004, the Board received a motion from the Applicant requesting a minor modification of plans and Condition No. 1 of BZA Order No. 16959, dated January 29, 2003. On August 3, 2004, the Board, at its regularly scheduled public meeting, granted the motion pursuant to the provisions of § 3129, including a requested waiver of the six-month filing requirement under § 3129.3. The minor modification will allow the escrow account for the Shakespeare Theater project to be created and funded, allowing the last phase of the project to move forward. The modification proposes to limit the location of the required preferred arts uses to lots 7000, 7004, 7009, 7010 and 7012 (part of Lot 41), which are part of the lots included in the original BZA approval.

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,

EXHIBIT NO. 42 CASE NO. 16959-A BOARD OF ZONING ADJUSTMENT District of Columbia

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.42

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 7000, 7004, 7009, 7010 and 7012 (part of Lot 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 (January 7, 2003): 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)

VOTE on Waiver of Time Limit and Minor Modification (August 3, 2004): 3-0-2

(Geoffrey H. Griffis, Curtis L. Etherly, Jr. to approve, David A. Zaidain to approve by proxy, Ruthanne G. Miller and the Zoning Commission member not voting, not having heard 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: AUG 0 5 2004

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."

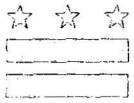
THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16959-A

As Director of the Office of Zoning, I hereby certify and attest that on AUG 0 5 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning