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November 16, 2004

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 Case No. 16959 and 16959-A
Request for Minor Modification of Order

Dear Board Members:

On behalf of the Applicants in the above-referenced case, we hereby amend our request for a minor modification of Condition Nos. 3 and 5 of the Order in BZA Case Nos. 16959 and 16959-A. The Applicants now only seek modification of Condition No. 5 to extend the building permit issuance deadline to July 31, 2005.

Based on recent discussions with the Office of Planning ("OP"), the Applicants have been advised that OP supports a request to extend the deadline for issuance of the building permit to July 31, 2005. However, OP does not support modifying Condition No. 3 to allow an excavation, sheeting and shoring permit to satisfy the requirement for a building permit, as requested in the Applicants modification request submitted October 20, 2004. Accordingly, the Applicants are withdrawing their request to modify Condition No. 3 and instead seek only an extension of the deadline for issuance of the building permit until July 31, 2005. A revised statement in support of this minor modification is attached for your consideration.

In light of the minor nature of the modification, the Applicants request the Board to place this matter on its December agenda as a consent calendar item.

Respectfully submitted,

Carolyn Brown

Enclosure

BZA
Case No. 16959-A
Exhibit No. 46

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.46

cc: Ellen McCarthy, Office of Planning
Jennifer Steingasser, Office of Planning
Leroy Thorpe, Jr., ANC 2C
Doris Brooks, ANC 2C

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BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION NOS. 16959 and 16959-A

MOTION FOR MINOR MODIFICATION
OF CONDITION NO. 5 OF THE BZA ORDER

I.
SUMMARY

On behalf of the Shakespeare Theater, the Applicants in the above-referenced case hereby request the Board of Zoning Adjustment (the "BZA" or "Board") to approve minor modifications to Condition No. 5 of BZA Order Nos. 16959 and 16959-A to extend the date for issuance of a building permit from December 31, 2004, to July 31, 2005.

II.
BACKGROUND

The Applicants are seeking this minor modification on behalf of the Shakespeare Theater, which will occupy a portion of the building on Lot 883 (formerly Lot 878) in Square 456. Lot 883 is part of a Combined Lot Development that includes Lots 880, 883 and 41 in Square 456, which is bounded by 6th, 7th E and F Streets, N.W. 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 883 (formerly Lot 878) is located on the south side of F Street east of the 575 7th Street building, and is further divided into a series of air rights (7000 series) lots. Lot 883 is currently being excavated for a new mixed use structure, consisting of performing arts center and related support space for the Shakespeare Theater, and offices.

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 several 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 Lots 880 and 41. 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. The Board modified Condition No. 1 of that Order on August 5, 2004, to specify that the required 7,000 square feet of arts space would be satisfied on Lot 41.

III.
NATURE OF RELIEF SOUGHT

The Applicants now request the Board to grant a further minor modification to Condition No. 5 of BZA Order No. 16959-A, pursuant to section 3129 of the Zoning Regulations. This modification request is being filed within six months of the issuance of BZA Order No. 16959-A in compliance with section 3129.3. To the extent the Board deems it necessary, the Applicants further request a waiver from the section 3129.3 in the event the Board views the time limit to run from the final date of the first Order in BZA Case No. 16959.

IV.
WAIVER OF THE SIX MONTH TIME LIMIT

In the event the Board deems a waiver necessary, the Applicants submit the following rationale for the waiver. The combined lot development of the subject property has been proceeding on a phased basis. Phases I and II for the residential and commercial office buildings, respectively, have been completed. Phase III, which comprises the and Shakespeare Theatre commercial office building on F Street, N.W., has been designed and sheeting and shoring/excavation has commenced. s presently waiting on issuance of permits to allow its construction. The Applicants had anticipated that a building permit would be issued for the new structure prior to December 31, 2004, the deadline

under Condition No. 5 of the BZA Order for satisfaction of the arts requirement by the Shakespeare Theater. However, as described in greater detail below, issuance of the final building permit may be delayed beyond December 31, 2004, due to the comments received on the construction drawings from the third-party reviewer in early September and change orders in the building finishes.

The nature and extent of the comments received, as well as the changes in the exterior material, could not have been anticipated by the Applicants when it sought the previous minor modification in July of this year. However, the additional time requested by the Applicants is minor in nature and does not in any way affect the substance of the Board's earlier approval.

V.
DESCRIPTION OF THE MODIFICATION

The Applicants request minor modification of Condition No. 5 of Order No. 16959-A to extend the deadline for issuance of a building permit for the Shakespeare Theatre space. Condition 5 currently read as follows:

> 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 requirements for Lots 880, 878 and 41....

BZA Order No. 16595-A, August 5, 2004, at 2 (emphasis added).

The Applicants propose to modify this language, as follows:

> 5. If the arts requirements are not satisfied consistent with Condition No. 3 of this order by July 31, 2005, the Office of Planning may direct the $1.5 million escrow to be paid in one of the following manners in satisfaction of the arts requirements for Lots 880, 883 and 41....

This minor modification to the Board's Order will provide enough time for the city to issue the building permits, which are currently under review, for the Shakespeare Theater.

VI.
RATIONALE FOR THE REQUEST

When the Board first considered this application in December 2002, the Applicants believed a two-year deadline was ample time to secure the necessary permits for the Shakespeare Theater building. In July 2004, when the Board considered the first minor modification request, the Applicants had already submitted the construction drawings for third-party review for compliance with the D.C. Construction Codes. Drawings were also sent out for construction bids on July 23, 2004.

On September 8, 2004, the Applicants received preliminary comments from the third-party inspector on the drawings. About the same time, upgrades were requested for the exterior cladding of the building, necessitating new drawings for the bid process. The new exterior cladding drawings were being issued for bid October 15, 2004, and the drawings responding to third-party comments will be reissued November 2004. Thereafter, the Applicants will receive final comments from the third-party reviewer, and from the Historic Preservation Review Board staff on the exterior cladding. Once all comments are received, a final set of drawings will be produced for permit issuance, with certification from the third-party reviewer that drawings comply with the D.C. Construction Codes. Thereafter, the city can issue the final construction permit for the new theater and office building.

The permit for excavation, sheeting and shoring of the site was issued October 12, 2004. A building permit for the new construction is anticipated in January or February of 2005, with construction starting immediately thereafter. In an abundance of caution, however, the Applicants are seeking a seven-month extension of the BZA deadline until July 31, 2005.

VII.
GOVERNMENT AND COMMUNITY RESPONSE

The Office of Planning has indicated its support for an extension of the building permit issuance deadline until July 31, 2005. Additionally, Advisory Neighborhood Commission 2C is also in support of this minor modification and a letter has been submitted to the record to that effect.

VIII.
CONCLUSION

Based on the foregoing, the Applicants respectfully request the Board to grant the requested the minor modification so that the permit issuance deadline is extended to July 31, 2005.

Respectfully submitted,

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Date: November 16, 2004

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