GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16959-B 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 883 (former Lot 878).

HEARING DATE:	December 17, 2002
DECISION DATE:	January 7, 2003
1ST MODIFICATION DECISION DATE:	August 3, 2004
2ND MODIFICATION DECISION DATE:	December 7, 2004

DISPOSITION: By Order No. 16959, January 7, 2003, the Board granted Application No. 16959 by a vote of 4-0-1 (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 No. 16959-A, August 3, 2004, the Board granted a minor modification and waiver of the time limit for a modification by a vote of 3-0-2 (Geoffrey H. Griffis, Churtis L. Etherly, Jr. to approve; David A. Zaidain to approve by proxy, Ruthanne G. Miller and the Zoning Commission member not voting, not have heard the case).

SECOND MINOR MODIFICATION ORDER

By letter dated October 20, 2004, the Applicant requested the Board to modify Condition Nos. 3 and 5 of the Order to extend the deadline for issuance of the permit for the Shakespeare Theatre building until July 31, 2005, in satisfaction of the arts requirement on the site, and to clarify the type of permit that may be issued in fulfillment of that deadline to include the sheeting and shoring permit. By letter dated November 16, 2005, the Applicant amended its request to proceed only with modification of Condition No. 5 to extend the permit issuance deadline to July 31, 2005.

THE WAIVER REQUEST

As part of its filing, the Applicant requested a waiver from the six month limitation for filing requests for modification of plans with the Board, as set forth in section 3129.3 of

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the Zoning Regulations. The Board granted the application in January of 2003, less than eight months prior to the filing of the requested modification. The full evolution of permit drawings and continuing compliance review by the District of Columbia brought to light only within the preceding few weeks the need to extend the deadline for issuance of a building permit beyond December 31, 2004. The six-month period for seeking a modification is out of consonance with the two-year period provided in section 3130 for filing an application for a building permit. The Board granted the waiver of the six-month filing requirement to consider the requested modification, finding good cause and no prejudice to any party.

THE MODIFICATION

In Application No. 16959, the Applicants requested a variance from the arts and entertainment requirements of section 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.

The Applicants have proceeded in good faith to obtain building permits within the time deadline set by the Board in its initial order. 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. On September 8, 2004, the Applicants received preliminary comments on the drawings from its third-party inspector. 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 issued for bid October 15, 2004, and drawings responding to third-party comments were to be reissued November 2004. Thereafter, the Applicants expect to receive final comments from the third-party reviewer. 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, thus enabling to city to 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 seek a seven-month extension of the BZA deadline until July 31, 2005.

DECISION

The Board concludes that the requested modifications are minor and are within the requirements of section 3129, as "minor modification[s] that do not change the material facts the Board relied upon in approving the application." After reviewing the request for modification and the supporting materials, the Board determines that the request should be granted.

Accordingly, it is therefore hereby **ORDERED** that the motion for waiver of the rules to consider the request is **GRANTED** and that the second motion for modification is **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, 883 (formerly 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 the shell space of the Shakespeare Theatre facility on Lot 883 (former 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 883 (formerly 878), shall be satisfied entirely on Lot 883.

4. The applicant may replace with retail uses any ground-level streetfront 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 requirement 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 to 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 **July 31, 2005**, 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, 883 (formerly 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 his option has been selected, the application 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 leased 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.

DATE OF DECISION: December 7, 2004

VOTE: **3-0-2** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., and John G. Parsons to approve; Ruthanne G. Miller and David A. Zaidain, not participating, not voting)

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: December 20, 2004

UNDER 11 DCMR 3125.9, "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."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16959-B

As Director of the Office of Zoning, I hereby certify and attest that on DEC 2 0 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