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May 10, 2007

Steven E. Sher
Director of Zoning and Land Use Services
202 663 7278
steven.sher@hklaw.com

VIA HAND DELIVERY

Mr. Richard S. Nero
Deputy Director
Ms. Leigh Johnson
Compliance Review Specialist
D.C. Office of Zoning
Suite 210
441 4th Street, N.W.
Washington D.C. 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 16959
EXHIBIT NO. 50

Re: BZA Orders No. 16959
675 E Street, N.W.
Request for Determination of Compliance with Conditions

Dear Mr. Nero and Ms. Johnson:

This is to request a determination of prospective compliance with the conditions of the Orders of the Board of Zoning Adjustment in Case No. 16959. The property involved is located at the northeast corner of the intersection of 7th and E Streets and is improved with a high-rise apartment house with ground floor arts uses. The property is known as Record Lot 41 in Square 456; the arts uses space consists of air rights lots 7000, 7004, 7009, 7010 and 7012.

Square 456 is bounded by 7th Street on the west, F Street on the north, 6th Street on the east, and E Street on the south and is now improved with the project known as Terrell Place. Record Lot 41, having the address of 675 E Street, is located at the northeast corner of 7th and E Streets and is improved with a residential building with arts and retail uses on the ground floor and B-1 level. This lot has been further divided into a series of condominium (2000 series) and air rights (7000 series) lots, which includes Lots 7000, 7004, 7009, 7010 and 7012.

The original Application also included Assessment and Taxation Lots 878 and 880. Lot 880, having the address of 575 7th Street, is located at the southeast corner of 7th and F Streets and is improved with an office building with ground-floor retail and service uses. Lot 878 was converted to a new Lot 883, is located east of the 575 7th Street building on the south side of F Street, and has now been further subdivided into a series of air rights (7000 series) lots. Lot 883 is improved with the Sidney Harman Hall, which contains a performing arts center and related support space for the Shakespeare Theatre's Harman Center for the Arts.

Square 456 is located within the Downtown Development (DD)/C-4 District. The property is located in three of the DD subareas, the Downtown Arts District, Housing Priority Area C and the Downtown Historic District. The property is therefore subject to the

Board of Zoning Adjustment
District of Columbia
CASE NO.16959
EXHIBIT NO.50

requirements of §§1704, 1706 and 1707 of the DD District, which include requirements for preferred uses, including residential and arts uses. The preferred uses were distributed between the two record lots involved through the Combined Lot Development provisions of §1708.

The owners of the property went through a series of proceedings before the Zoning Commission and the Board of Zoning Adjustment to arrive at a development which could meet all of the overlapping and interlocking DD requirements and which could be built. The last of those proceedings had to do with Shakespeare's proposal to acquire the 620 F Street portion of the site upon which it would construct a new theater for its use.

In Application No. 16959, the Applicant requested a variance from the arts and entertainment requirements of §1704.3(a) to allow a contribution of $1.5 million to the Shakespeare Theatre to serve in lieu of actually providing preferred arts uses on-site on Lots 41, 878 and 880. The construction of new office and residential development was scheduled to proceed ahead of the new theater space. After the Applicant worked out the details of the contribution with the Office of Planning, by Order No. 16959, dated January 29, 2003, the Board granted the application subject to a number of conditions describing how the arts use requirement was to be satisfied. A copy of that Order is attached. Condition No. 1 of that Order required that, in addition to the contribution to the theater, 7,000 square feet of arts space be provided on Lots 41 and 880.

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 wholly satisfied on five air rights lots on Lot 41 and that none of that space was going to be located on Lot 880. A copy of Order No. 16959A is also attached. On December 20, 2004, the Board granted a motion to modify Condition No. 5 of the Order, which extended the deadline by which the building permits for the new Shakespeare Theatre facilities were to be issued. A copy of Order No. 16959B is also attached.

Condition No. 3 of the orders (the same in all three) provided that funds held in escrow for Shakespeare were to be released upon issuance of the building permit for the shell space of the theater. Building Permit No. B472881 was issued on May 11, 2005, to the Shakespeare Theater Company for "construction of a new theater building and office building" including parking below grade, as per the drawings submitted. A copy (not a very good copy) of the permit is attached. Pursuant to Condition No. 3, the funds designated for Shakespeare were released from escrow.

The BZA orders were essentially designed to ensure that the District would be provided with satisfactory arts space if Shakespeare's project did not go forward. The land area subject to an arts requirement is 92,096 square feet. Assuming that the entire arts requirement is to be satisfied by Shakespeare (a use qualifying under §1704.3(a)), the amount of arts space required is

0.5 FAR, or 46,048 square feet. Shakespeare has approximately 92,794 square feet devoted to the theater use over five levels. Accordingly, the total arts space provided for the property is about twice as much as the minimum required.

Since Shakespeare is under construction and the theater will be provided, all of the arts requirement for the overall project will be provided on Lot 883, the Shakespeare portion of Record Lot 40. Consistent with Condition No. 3 of Orders 16959A and B, it is our view that the 7,000 square feet of space on Lots 7000, 7004, 7009, 7010 and 7012 (which are part of Record Lot 43), referenced in Condition No. 1, no longer needs to be limited to arts uses but may be devoted to any use permitted in the C-4 District. We hereby request a determination that, if we use the space on those lots for permitted uses other than arts and entertainment-related uses, we would be in compliance with the conditions of BZA Orders 16959.

Feel free to contact us if you have any questions or require any additional information/

Sincerely,

Steven E. Sher
Director of Zoning and Land Use Services

Attachments

cc: Cheryl Numark

4493058_v1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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: **4-0-1** (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 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 2 9 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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16959

As Director of the Office of Zoning, I hereby certify and attest that on JAN 2 9 2003 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:

Norman M. Glasgow, Jr., Esq.
Carolyn Brown, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

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Advisory Neighborhood Commission 2C
612 Emmanuel Court, N.W. #204
Washington, D.C. 20001

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106
Washington, D.C. 20004

Robert Kelly, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
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Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

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,

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): 4-0-1 (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)

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.

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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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:

Norman M. Glasgow, Jr., Esq.
Holland & Knight LLP
Suite 1000
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Chairman
Advisory Neighborhood Commission 2C
P.O. Box 26182
Washington, D.C. 20001

Commissioner 2C03
Advisory Neighborhood Commission 2C
P.O. Box 26182
Washington, D.C. 20001

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106
Washington, D.C. 20004

Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
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Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

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

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:

M. Carolyn Brown, Esq.
Holland & Knight LLP
Suite 1000
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Chairman
Advisory Neighborhood Commission 2C
P.O. Box 26182
Washington, D.C. 20001

Commissioner 2C03
Advisory Neighborhood Commission 2C
P.O. Box 26182
Washington, D.C. 20001

Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
Suite 106
Washington, D.C. 20004

Toye Bello, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Form B-PA-15
(Rev. 9/30/01)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

BUILDING PERMIT

PERMIT NO. B472881

Date 5/11/05 (TYPE) NEW BUILDING

Address of work 620 "F" ST. NW. Lot 40 Square 456

Permission is hereby granted to (Owner) TOTAL PERMIT FEE $

THE SHAKESPEARE THEATRE CO. C/O CARR FILING FEE $

NO. DATE

FEE PAYABLE $ 77,261.78

Authorized work and conditions of performance thereof.

FOR INSPECTIONS CALL 727-7562

CONSTRUCTION OF NEW THEATRE BUILDING AND OFFICE BUILDING AND 4 LEVELS OF PARKING BELOW GRADE, AS PER DWGS.

PERMIT

Builder—

Value $ No. of Bldgs. VACANT

Width of Bldg. Length Height No. of Stories VACANT

Zone To be occupied as

Height of terrace above grade Projections

Address of owner 1850 K ST. NW. WDC. 20016

Deposit No. Amount $

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

PATRICK CANAVAN ACTING DIRECTOR

DIRECTOR

Chief, Permit Issuance Branch

By

Permit Clerk

E. KING