BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17033
EXHIBIT NO. 38

Application No. 17033-A of Washington Drama Society, Inc. dba The Arena Stage, pursuant to 11 DCMR § 3103.2, for a variance from the building height requirements under Section 930, to permit the redevelopment of an existing theater in the W-1 District at premises 1101 6th Street, S.W. (Square 472, Lots 123 and 126).

Hearing Date (Application No. 17033):	July 8, 2003
Decision Date (Application No. 17033):	July 8, 2003 (Bench Decision)
Final Issue Date (Application No. 17033):	July 8, 2003
Modification Decision Date:	July 31, 2007

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF APPROVED PLANS

SELF-CERTIFIED

The zoning relief requested in this case was self-certified pursuant to 11 DCMR §3113.2.

BACKGROUND

The original Application for this property was BZA Application No. 16933, pursuant to 11 DCMR § 3103.2, for a variance from height limitations under Section 930, a variance from the floor area ratio requirements under Section 931, a variance from the lot occupancy requirements under Section 932, and a variance from the rear yard requirements under Section 933, to permit the construction of an addition to the existing theater buildings on the subject property. The addition to the existing project was proposed to remedy several deficiencies, such as acoustic interference, inadequate space, and inefficient circulation and lobby space, while at the same time creating an important space within southwest DC. The Board granted the relief on October 29, 2002 pursuant to the plans submitted.

The final summary order was issued on October 30, 2002 and a corrected summary order (16933-A) was issued on November 7, 2002.

In May 2003, the Applicant filed a new application – No. 17033 – requesting additional variance relief to further increase the height of the project. The Applicant stated that revisions included modifications to the cradle portion of the design, which contained the new theater and temporary accommodations for visiting performers, as well as revisions

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to the cantilevered element. When that approval was granted, the Board allowed the Applicant flexibility to modify the design as long as it received the approval of the Historic Preservation Review Board (HPRB) and/or the Commission of Fine Arts (CFA) and did not increase any areas of relief approved. Prior to the Board's hearing on this application, the CFA and ANC 6D voted to support the revised project. Staff for the HPRB determined that the changes did not require review by the HPRB or the Mayor's Agent. The Board of Zoning Adjustment heard and decided the case by bench decision on July 8, 2003 and issued a summary order with the same date. This relief was a modification to the height requirement approved in Application No. 16933. The instant order addresses the Applicant's request for modification of the July 8, 2003 order – No. 17033.

The Motion to Waive the Six-Month Filing Requirement and The Motion for Modification of Approved Plans

On June 15, 2007, the Applicant filed a motion for modification of approved plans and a motion for waiver of the six-month time requirement for filing motions pursuant to Section 3129 of the Zoning Regulations (Exhibit 34). As noted above, the final order approving Application No. 17033 was issued on July 8, 2003. Pursuant to § 3129.3, any modification to the order or the approved plans would need to be filed within a 6-month period - by January 8, 2004. The instant motion is being filed almost 3½ years later. The Board received reports from OP, CFA and HPRB, all in support of the motion for modification. The affected ANC, ANC 6D, did not file a report related to the current modification request. The Board approved the motion to waive the six-month filing requirement.

Proposed Modification

Subsection 3129.7 of the Zoning Regulations states that "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon its [sic] approving the application." The Applicant maintains that it meets the requirements of all provisions of § 3129.

The Applicant stated that the proposed changes are minor and only result in the elimination or reduction of the previously approved variance relief. As a result of the removal of the residential uses, the project has no requirement for a rear yard and 100% lot occupancy is permitted; therefore no variance relief is needed from the year yard provisions of § 933 or the lot occupancy provisions of § 932. Furthermore, the FAR of the proposed modified design is now within that permitted as a matter-of-right, eliminating the need for variance relief from § 931. Finally, although variance relief from the height requirements set forth in § 930.1 remains, the proposed height is now less than that approved in Application No. 17033. The Applicant's table below sets forth the elimination or reduction of each area of relief:

	Permitted in W-1 District	**BZA Case No. 16933-A (11/7/02)**	**BZA Case No. 17033 (7/8/03)**	**Proposed Modification**
Height	45 feet*	75 feet	89.77 feet	77.27 feet
FAR	Per 11 DCMR 2521.1(a) permits 2.0 FAR for commercial or nonresidential uses	2.8	2.5	2.0 **No relief necessary**
Rear Yard	3 in/ft but not less than 12 feet for *residential use*	8 ft. provided 4 ft variance approved	8 ft. 2 in. provided 3 ft 10 in variance approved	None required; no residential use **No relief necessary**
Lot Occupancy	80% for building with residential use	99% 19% variance approved	99% 19% variance approved	100% permitted; no residential use **No relief necessary**

*At the time of the previous BZA cases, only 40 feet was permitted by 11 DCMR §930.

Since the approval granted in Application No. 17033, the Applicant has continued to refine the project and, more recently, has made necessary revisions to bring the project within budget. The applicant has been able to maintain the programmatic use elements, with the exception of the residential uses for artists, and has made relatively minor revisions to the architecture of the project. The Applicant notes that the approved project is significantly in keeping with the design of the proposed modification.

The Office of Planning submitted a report dated July 24, 2007. The report includes background information, details of the project and a zoning evaluation, pursuant to Section 3129. According to OP, the current proposal is to modify the original design in response to various programmatic, engineering, and cost concerns. The major revisions

are elimination of the artists' apartments above the new "cradle" theater; the re-engineering and modification of the overhanging roof, and the removal of the continuous reflecting pool along the Maine Avenue front of the building. Less significant changes would involve the corner entrance at 6th Street and Maine Avenue, the terrace layout, and design of the north elevation facing the adjoining apartment complex. The Office of Planning analyzed the zoning and design of the project and recommended approval of the modification request.

On July 12, 2007, the Applicant filed supplemental information (Exhibit 35), including letters of support from the U.S. Commission of Fine Arts and the Historic Preservation Review Board (HPRB).

There were no other parties to the application.

CONCLUSIONS OF LAW

The Board, after reviewing the Applicant's written submission and plans, as required by 11 DCMR § 3129.5, concludes that the modifications requested are minor and do not change the material facts upon which the Board relied in approving the application. See, 11 DCMR § 3129.7. Therefore, the Board concludes that the Applicant's request for permission to modify its plans meets the requirements set forth in the regulations for a minor modification. It is hereby **ORDERED** that the motion is **GRANTED** and the plans (Exhibit 34) are approved, **SUBJECT** to the **CONDITION** that the Applicant may modify the design of the building as necessary to gain the approval of the Historic Preservation Review Board and/or the Commission of Fine Arts, provided that any such modifications do not increase any of the areas of relief granted by the Board of Zoning Adjustment, or create any new areas of relief.

VOTE: **3-0-2** (Curtis L. Etherly, Jr., Ruthanne G. Miller, and John G. Parsons (by absentee ballot) to grant; Marc Loud and John A. Mann II not participating.)

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

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

FINAL DATE OF ORDER: AUG 09 2007

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 § 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.

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