GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16687 of JBG/JER 2440 M, L.L.C., pursuant to 11 DCMR § 3104.1 for a special exception under subsection 411.1 to allow a roof structure not meeting the enclosure provision (411.3), and variances under 11 DCMR §§ 3103.2 and 773.3 from the residential recreation space requirements and subsection 774.1 from the rear yard requirements and subsection 771.2 from the floor area ratio requirements to allow the construction of a 138-unit apartment house with parking in a C-2-C District at premises 2440 M Street, NW (Square 25, Lot 20).

Note: The Board, at the public hearing, accepted the request of the Applicant to withdraw the advertised relief sought from the FAR requirements under section 771.2.

HEARING DATE: April 24, 2001
DECISION DATE: April 24, 2001 (Bench Decision)

SELF CERTIFICATION

The zoning relief requested in this case was self certified, pursuant to 11 DCMR 3113.2

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 the Applicant, Advisory Neighborhood Commission (ANC) 2A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP) for review and report.

The subject property is located within the jurisdiction of ANC 2A. ANC 2A,which is automatically a party to this application, filed a written statement in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR § 411 and a variance from the strict application of the requirements of 11 DCMR §§ 773.3 and 774.1. A group of tenants from the existing medical office building at 2440 M Street, NW, (the " Tenants") filed a Motion for Party Status on April 10, 2001. Andrea Ferster, legal counsel to the Tenants, withdrew the request for party status as a preliminary matter at the hearing and stated that the Tenants supported the application. The Knightsbridge Condo Association, through its representative Michael Ryan, filed a request for party status by letter dated April 9, 2001. No representative appeared or participated at the public hearing. One person, Ms. Christine Garner testified in opposition.

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EXHIBIT NO.42

The Board requested that the Applicant submit additional parking plans to show the lower two and one-half parking levels. These plans were submitted on May 2, 2001.

Based upon the record before the Board and having given great weight to the ANC's statement and the Office of Planning's report filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104 .1 and 411.1 and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 under §§ 773.3 and 774.1, that there exists an exceptional or extraordinary situation or condition related to the property that 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. It is therefore **ORDERED** that the application be **GRANTED.**

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.

VOTE: 3-0-2 (Susan M. Hinton, John G. Parsons and Anne M. Renshaw to approve, Sheila Cross Reid, not present not voting, the third mayoral appointee, not participating in the case, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: JUN - 6 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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As Director of the Office of Zoning, I certify and attest that on JUN - 6 2001, a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Attested by: Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director