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MEMORANDUM

Revised Draft Order

Rec'd 7.3.01 4:55 pm

TO: Beverly Bailey
D.C. Office of Zoning

FROM: Phil Feola PF
Martin P. Sullivan MPS

DATE: July 2, 2001

RE: BZA Application No.16700

Per our recent discussion, it is our opinion that the Special Exception approval in the above referenced case was granted by the BZA pursuant to Section 3104.1 of the Zoning Regulations. This section was cited in the official notice for Application No.16700, dated March 15, 2001. Section 411 of the Zoning Regulations is explicitly subsumed by the more comprehensive Section 3104.1. In fact, the Section from which relief was sought, Section 411.3, was also cited in the published Notice. We believe that reference to the Section from which the relief was sought (Section 411.3) and the special exception authority of the Board (Section 3104.1) to grant a special exception pursuant to Section 411 provided sufficient notice to issue a valid BZA Order in this application.

Accordingly, we have revised our draft order to be consistent with the Official Notice by noting Section 3104.1, rather than Section 411. Please call if you have any questions.

Document # 1134648 v 1

BZA
Case No. 16700
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16700
EXHIBIT NO.35

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16700 of The Jerome S. and Grace H. Murray Foundation, et al., pursuant to 11 DCMR § 3103, for variances from the residential recreation space, floor area ratio and lot occupancy requirements of 11 DCMR §§ 773.3, 771.2 (1706.7) and 772.1, and also pursuant to 11 DCMR § 3104.1 for a special exception from the roof structure requirements of 11 DCMR §§ 400.7 and 411.3 to allow the construction of an apartment house with ground floor retail in the DD/C-2-C District at premises 300 Massachusetts Avenue, N.W. (Square 529, Lots 9, 21-25, 30-33, 811-817, 820, 821, 829, 835-838, 840, 841, 844).

HEARING DATE: May 8, 2001

DECISION DATE: May 8, 2001 (Bench Decision)

SUMMARY ORDER

The applicant, The Jerome S. and Grace H. Murray Foundation, et al., seeks variances from 11 DCMR §§ 773.3, 771.2 (1706.7) and 772.1 and a special exception pursuant to 11 DCMR § 3104.1 to construct a 14 story apartment house with ground floor retail on the subject property. The zoning relief requested in this case is self-certified pursuant to 11 DCMR 3113.2.

The Board of Zoning Adjustment 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) 6A, the ANC for the area within which the subject property is located, and to the owners of property within 200 feet of the site. The applicant's affidavit of posting indicates that zoning posters were timely placed in front of the property, in plain view of the public.

The degree of the variances requested is contingent on a pending alley closing within the subject site. In Alternative No. 1, in which the alley is legally closed, the requested variances would permit the applicant to construct an apartment building providing (1) residential recreation space of not less than 5 percent of the building's residential gross floor area and (2) a floor area ratio (FAR) no greater than 9.0. In Alternative No. 2, in which the alley is not legally closed, the requested variances would apply to north and south portions of an apartment building on two separate lots providing (1) residential recreation space of not less than 5 percent in total for the two separate lots, (2) a floor area ratio of 9.01 for the north portion of the project and 8.65 for the south portion of the project and (3) a lot occupancy of 83% for the north portion of the project.

The special exception would permit the applicant to construct a total of three mechanical rooftop enclosures on the project, regardless of the outcome of the alley closing. Additionally, one of the rooftop enclosures will be 18 feet, 6 inches in height, but will only be set back from the property line a distance of 11 feet, nine inches.

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 variance from the requirements of 11 DCMR §§ 773.3, 771.2 (1706.4) and 772.1 and a special exception pursuant to §3104.1. The applicant demonstrated that as a result of the location, size, shape, zoning history and historic characteristics of the site, strict compliance with the Zoning Regulations would threaten the economic viability of the project. Due to the proposed building's siting and design, the requested variances will not result in substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan. Also due to the proposed building's siting and design, the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. The applicant has further shown that the requested zoning relief would encourage downtown housing in accordance with the intent, purpose, and integrity of the zone plan embodied in the Zoning and Regulations and Map. The D.C. Office of Planning evaluated the application and recommended that the Board grant the requested variances, subject to certain conditions.

ANC 2A, which is automatically a party to this application, submitted no objections to the record of this case.

The Downtown Cluster of Congregations submitted a letter in support of the application. Ward Six Councilmember Sharon Ambrose also submitted a letter in support of the application. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any person.

Based upon the record before the Board and having given great weight to the recommendations of the Office of Planning and the ANC as required by D.C. Code § 412.47 and Section 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13—135, 47 DCR 5519 (2000)), the Board concludes that the applicant has met its burden of proof under 11 DCMR § 3103.2 and § 3104.1. The Board further concludes 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. The Board further concludes that the size, location and historic quality of the project would tend to make full compliance with the requirements of §§ 400.7 and 411.3 unduly restrictive and would not materially impair the light and air of adjacent buildings. The Board also concluded that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Map and will not tend to affect adversely the use of neighboring property. It is therefore **ORDERED** that this application be **GRANTED**, subject to the following conditions:

1. That the entire proposed mixed-use residential and commercial development be constructed on the subject properties in one phase.

2. That subsequent expansion of the site by subdivision, to include adjacent lots 28, 29 and 818, and the associated expansion of the mixed-use development onto these lots would not require recalculation of the modified zoning requirements approved under this application.

3. That the revised site and building plans entitled "Massachusetts Courts, Square 529 – Mass. Ave. & Street, Washington, D.C.", prepared by SKG Architects & Planners LLC for Clark Realty Capital, LLC and dated April 20, 2001 would become part of this approval.

Pursuant to 11 DCMR § 3101.6 and at the request of the applicant, the Board waived the requirement of Subsection 3125.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: **3-0** (Anne M. Renshaw, Sheila Cross Reid, Susan Hinton to approve; Carol Mitten, abstaining, having recused herself;)

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

Each concurring member has approved the issuance of this Summary Order and has authorized the undersigned to execute this Summary Order on his or her behalf.

ATTESTED BY: _____

JERRILY A. KRESS, FAIA
Director

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE § 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2038, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE AND UPON ITS FILING IN THE RECORD AND SERVICE ON THE PARTIES.

PURSUANT TO 11 DCMR § 3130, THIS ORDER OF THE BOARD SHALL NOT BE VALID FOR A PERIOD IN EXCESS OF TWO YEARS UNLESS WITHIN SUCH TIME THE PLANS FOR THE ERECTION OF THE STRUCTURE ARE FILED FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

BZA APPLICATION NO. 16700:

As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of foregoing Decision and Order in BZA Application No. 16700 was mailed first class, postage prepaid, or via D.C. Government interoffice mail, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Ivette Basterrechea
Advisory Neighborhood Commission 6A
1610 D Street, NE
Washington, DC 2002

Councilmember Sharon Ambrose
441 4th Street, N.W.
Suite 710
Washington, DC 20001

Michael Johnson
Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, DC 20002

ATTESTED BY: _____

JERRILY R. KRESS, FIA
Director, Office of Zoning

Document #: 1114220 v.2

Document #: 1114220 v.4

ShawPittman LLP

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FAX COVER PAGE

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