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 § 3103.2, 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)[1]

HEARING DATE: **May 8, 2001**
DECISION DATE: **May 8, 2001 (Bench Decision)**

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2 (Exhibit No. 5).

The applicant, The Jerome S. and Grace H. Murray Foundation, et al, seeks zoning relief to construct a 14-story apartment house with 350 new apartment units and ground floor retail on the subject property.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the applicant, Advisory Neighborhood Commission (ANC) 6A, and to owners of all property within 200 feet of the property that is the subject of this application.

The subject property is located within the jurisdiction of ANC 6A. ANC 6A, which is automatically a party to this application, did not participate in the hearing or submit a written statement.

The Board encourages the applicant to provide details about construction at the site to Advisory Neighborhood Commission 6A. The information may include details about the hours and days of operation, the name and telephone number of a contact person who would be

[1] The Office of Zoning requested that the applicant clarify the zoning relief required for this project. The announcement reflects the relief identified by the applicant (Exhibit No. 35) and approved by the Board.

BZA
Case No. 16700
Exhibit No. 36
Board of Zoning Adjustment
District of Columbia
CASE NO.16700
EXHIBIT NO.36

available to respond to questions and emergencies, the construction route, and any proposed mitigation efforts to control noise and dust.

The project is supported by the Office of Planning and the Historic Preservation Review Board (Exhibit No. 30), the Commission of Fine Arts (Exhibit No. 28), Councilmember Sharon Ambrose (Exhibit No. 31), and the Downtown Cluster of Congregations (Exhibit No. 29).

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 variances and special exception from the strict application of the requirements of 11 DCMR §§ 3103.2 and 3104.1. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in the proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

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 where the alley ***is not*** legally closed, the requested variances would apply to the northern and southern 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) an FAR of 9.01 for the northern portion of the project and an FAR of 8.65 for the southern portion of the project, and (3) a lot occupancy of 83 percent for the northern portion of the project.

The special exception would permit the applicant to construct a total of three mechanical rooftop enclosures, regardless of the outcome of the alley closing. Additionally, one of the rooftop enclosures will be 18 feet, 6 inches in height, and will be set back from the property line a distance of 11 feet 9 inches.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof under 11 DCMR §§ 3103.2, 773.3, 771.2 (1706.7) and 772.1 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. The Board further concludes that the applicant has met the burden of proof under §§ 3104.1, 400.7 and 411.3 that granting the requested relief will be 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. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The entire mixed-use residential commercial development shall be constructed on the site in one phase.

2. The 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 will not require recalculation of the modified zoning requirements approved under this application.

3. The project shall be constructed in accordance with revised building plans dated April 20, 2001, located at Exhibit 28, Tab C, of the record.

Pursuant to 11 DCMR § 3101.6, the Board waived 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 Morgan Hinton, Anne Mohnkern Renshaw, and Sheila Cross Reid to approve; Carol J. Mitten recused herself; the third mayoral appointee not hearing the case, not voting)

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

Each concurring Board member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: JUL 12 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.

BAB/6.15.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16700

As Director of the Office of Zoning, I hereby certify and attest that on JUL 12 2001 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:

Phil T. Feola
Shaw Pittman
2300 N Street, N.W.
Washington, DC 20037

John A. Sunter
7506 Greendale Road
Chevy Chase, Maryland 20815

Ivette Basterrechea, Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 76680
Washington, DC 20013

Marina L. Martin, Commissioner
Single Member District 6A06
326 10th Street, N.E.
Washington, DC 20002

Michael Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Councilmember Sharon Ambrose
Ward 6
441 4th Street, N.W., Suite 710
Washington, DC 20001

Ellen McCarthy, Deputy Director
Development Review
Office of Planning
801 North Capitol Street, NE, Room 400
Washington, DC 20002

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

JERRILY R. KRESS, FAIA
Director