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November 19, 2001

BY HAND
Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

Re: BZA Application No. 16809
719-735 6th Street, N.W.; Square 486, Lots 11-13 and 804-808
Our File No. 099711-0000

Dear Mr. Griffis:

Enclosed for consideration by the Board of Zoning Adjustment you will find an original and nine (9) copies of the prehearing statement of the applicant in the above-referenced matter. With a copy of this letter, we are sending a copy of the prehearing statement to the Office of Planning and ANC 6A.

Thank you for your attention to this matter.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad Zigner

Enclosures
cc: Mr. Richard D. Koch (by hand)
ANC 6A; PO Box 76680,
Washington, DC 20013-6680 (w/encl.)
Office of Planning, Attn: Maxine Brown-Roberts

45624961.1

BZA
Case No. 16809
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.16809
EXHIBIT NO.23

PRE-HEARING STATEMENT ON APPLICATION

for

AREA VARAINCES

at

719 -- 735 6TH Street, N.W., Washington, D.C.

on behalf of

AvalonBay
COMMUNITIES, INC.



BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of:
AvalonBay Communities, Inc.

BZA Application No.: 16809
Hearing Date: December 18, 2001

STATEMENT OF THE APPLICANT

I.
Introduction

This is an application pursuant to 11 D.C.M.R. § 3103. AvalonBay Communities, Inc. ("AvalonBay"), is the owner of the property at Square 486, Lots 11-13 and 804-808, which property has a premises address of 719-735 6th Street, N.W. (the "Property"). AvalonBay seeks three area variances pursuant to Sections 770.6(b), 1706.4 and 1705.3 of the Zoning Regulations from the roof structure set back, the residential recreation space and the retail requirements of the Zoning Regulations, respectively. The area variances are sought so as to permit the construction of a mixed-use development consisting of residential and retail uses. AvalonBay submits that it meets the criteria for these area variances.

II.
Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to 11 D.C.M.R. § 3103.2.

III.
Background Information

The Property and Surrounding Neighborhood. The Property is located in Square 486 in the Chinatown area of the Downtown Development District (the "DD"). Square 486 is bounded by

5th and 6th Streets to the east and west, respectively, and H and G Streets to the north and south, respectively. Square 486 is bisected into quadrants by a 30' east-west public alley and a 16'75" north-south public alley. The Property is located in the northwest quadrant of Square 486. Lot 10, which is to the south of the Property, is improved with a three-story brick building and Lot 36, to the north of the Property, is vacant.

The Property contains 12,750 square feet and is 150 feet wide with a depth of only eighty-five feet (85').

At the corner of 5th and H Streets, N.W. in Square 486 is a 10-story Red Roof Inn, which is on the opposite side of the north-south alley, to the east of the Property. AvalonBay has obtained the necessary approvals for the construction of a luxury, high-rise apartment building at 770 5th Street, N.W. (Square 486, Lots 35, 818, 819, 821, 822, 823 and 827), which is located to the immediate south of the Red Roof Inn. A portion of the north-south alley which is adjacent to the Property was closed to facilitate the development of the luxury, high-rise apartment building.

As mentioned above, the Property is located in the Chinatown area of the DD. The Chinatown area consists of Chinese retail and office uses, as well as the Wah-Luck House, a Chinese oriented apartment house located at 800 6th Street, N.W. on the northeast corner of the intersection of 6th and H Streets, N.W.

The Property is located less than one block away from the MCI Center and the 7th Street entertainment retail and arts district. Other recreational facilities in the surrounding area include the National Building Museum (401 F Street, N.W.), the National Museum of Art and National Portrait

Gallery (750 9th Street, NW).[1] In addition to being centrally located to numerous entertainment, retail and other recreational uses, the Property is conveniently located within one block of the Gallery Place Metrorail Station and two blocks from the Judiciary Square Metro Station.

The surrounding area generally consists of medium to high-density commercial development.

The Applicant. AvalonBay, which is one of the nation's leading Real Estate Investment Trusts ("REIT"), specializes in the development, acquisition, redevelopment, construction and management of institutional-quality, multifamily residential communities and mixed-use properties in high barrier-to-entry markets in the United States. As of September 30, 2001, AvalonBay owned or held interest in 141 apartment communities containing 41,240 apartment homes in eleven states and the District of Columbia, of which fifteen communities were under construction and three communities were under reconstruction. AvalonBay currently owns or holds interest in twenty-one (21) communities in the District of Columbia Metropolitan Area, including its luxury high-rise located at 4100 Wisconsin Avenue, N.W. and the site under construction at 770 5th Street, NW. Because of AvalonBay's focus on providing a convenient living experience, many of its communities are located near centers of employment, shopping, transportation, arts and entertainment.

AvalonBay has been continually recognized by the National Association of Home Builders ("NAHB") through NAHB's Pillars of the Industry Awards program. This awards program, conducted annually, recognizes companies that demonstrate the highest standards in multi-family housing design and management and who promote a positive image of the multi-family housing industry. NAHB awards which AvalonBay has received over recent years include: 1996 Property

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[1] Both the National Museum of Art and the National Portrait Gallery are located in the Old Patent Office Building, which is in the block bounded by G and F Streets, N.W. to the north and south, respectively, and 7th and

Management Firm of the Year; 1998 Best Mid- or High-Rise Development of the Year; 1998 Development Firm of the Year; 1999 Development Firm of the Year; 1999 Best Rehabilitation of a Multifamily Property; 1999 Best Mid- or High-Rise Apartment Community; 1999 Best Mid- or High-Rise Development of the Year; 2000 Best Multifamily Community by a REIT.

The Proposed Development. The Property is currently vacant and is used as a parking lot. By this application, AvalonBay proposes to construct a mixed-use development for retail and residential use. The proposed building, currently known as Gallery II, will be approximately 150 feet in length and 68 feet in depth. The building will consist of 5,833 square feet of retail space on the ground level and 132 apartment units on levels 2 through 12. The apartments will consist of forty-four (44) studio units, fifty-five (55) one-bedroom units, twenty-two (22) one-bedroom plus den units and eleven (11) two-bedroom units. Additionally, a three-level, below grade parking garage will provide twenty-six (26) compact parking spaces, forty-nine (49) standard spaces and three (3) handicapped parking spaces, for a total of seventy-eight (78) parking space.

The residential entrance to the proposed building will be located towards the southern end of the building on 6th Street, N.W. This configuration allows for the greatest maximization of retail space. Loading, van parking, as well as the entrance to the parking garage will be provided at the rear of the building off the former alley.

The proposed project is the second phase of a mixed use development in Square 486. The first phase, known as Gallery I, will be located at 750 5th Street, N.W. Gallery I and Gallery II are separated by the former north-south alley which bisects Square 486. Gallery I will consist of 203

9th Streets to the east and west, respectively. The building is currently under renovation and is scheduled to reopen in 2004.

apartment units, approximately 8,600 square feet of ground floor retail space and three levels of underground parking containing approximately 150 spaces. Additionally, Gallery I will provide 7,000 square feet of residential recreation space, including a 5,000 square foot rooftop deck and a fitness facility of approximately 2,000 square feet. Residents of the proposed project for the subject Property will be allowed access to these residential recreation facilities at Gallery I. For the convenience of the residents of Gallery II, access will be provided between the two buildings through rear entrances to the respective buildings. The former alley will be well lit to ensure the safety of the residents.

The façade of the proposed building will be primarily red and brown brick, with metal panels and other metal embellishments. Given the location of the proposed building in Chinatown, the proposed building will incorporate Chinese design elements into the design of the building and adjacent streetscape. Chinese design elements proposed by AvalonBay include:

1. The incorporation of tree box guard rails of Chinese design into the streetscape along 6th Street. Consistent the Chinatown Design Study, Chinese Elm trees will be liberally planted along 6th Street.

2. Installation of pavers depicting the twelve animals of the Chinese zodiac as part of the streetscape in front of the building.

3. Chinese lanterns similar to the ones depicted in the Chinatown Design Study.

4. Planters of Chinese design to be placed on either side of the entrance doors to the building. The planters will contain plantings that are based on traditional Chinese landscape design and character.

5. The liberal incorporation of decorative metalwork of traditional Chinese design on the facade facing 6th Street, as well as the inclusion of decorative panels on the front facade that will have Chinese design patterns.

6. A transom window with a traditional Chinese design on the front entry door.

7. The building signage in both Chinese and English.

8. Canopies of traditional Chinese design extending from the front entrance facade of the building.

AvalonBay has retained an expert in Chinese design elements to assist in the design of these features and to generally assist in the design of elements that meet the requirements of the Chinatown element of the Comprehensive Plan.

Zoning. The Property is in the DD/C-2-C zone district. In addition to being located in the Chinatown area of the DD, the Property is located in Housing Priority Area B of the DD.

The purpose of the DD is to "help accomplish the land use and development policies of the Comprehensive Plan relating to the affected sectors of Downtown." 11 DCMR § 1700.2. One of the most important purposes of the DD is the goal of creating a balanced mix of uses by means of incentives and requirements for uses identified in the Comprehensive Plan. 11 DCMR § 1700.3(a). A major focus of the DD is the provision of incentives for the retention and development of residential uses to encourage the realization of the long standing goal of the District of creating a "Living Downtown". 11 DCMR § 1706.1(a); *see also* 10 DCMR §§ 900.3 and 903.

In general, the maximum FAR in the DD/C-2-C zone district is 8.0, of which at least 4.5 FAR must be devoted to residential use. 11 DCMR § 1706.4. An additional 0.5 FAR is permitted if the additional FAR is devoted to residential use. 11 DCMR § 1706.7(a). However, limitations on FAR do not apply where the subject property is devoted entirely to residential use or to a combination of residential use and retail, service, arts and arts-related uses listed in Sections 1710.1 and 1711.1. 11 DCMR §1706.7(b).

As mentioned above, the Property is located in the Chinatown area of the DD. In addition

to serving to protect the ethnic and cultural nature of the Chinatown area, the purpose of the Chinatown element of the Zoning Regulations and Comprehensive Plan is to "reinforce the area's economic viability by encouraging mixed use development, *including substantial housing*." 11 DCMR § 1705.1(c)(emphasis added).

Comprehensive Plan. The Downtown Element of the Comprehensive Plan seeks to encourage an atmosphere of "Living Downtown," a vision that was expressed approximately 20 years ago by the Mayor's Downtown Committee. The Downtown Element of the Comprehensive Plan recognizes that "a significant residential community is necessary to a vital Downtown." 10 DCMR § 900.7. Specifically, with regard to residential development, the Comprehensive Plan states that:

> The Downtown residential land use objective is to develop a significant residential community in Downtown in order to encourage a lively mix of activities, particularly in areas where existing neighborhoods can be retained and expanded, and where residents are important to mixed-use objections.

10 DCMR § 903.1.

With regard to the Chinatown area, the objective of the Comprehensive Plan is to:

> Retain and enhance Chinatown as a thriving, mixed-use Downtown community including *substantial housing* with community and cultural facilities, street-level retail with related wholesale operations, supporting office and professional uses, and hotels.

10 DCMR § 927.1(a)(emphasis added).

The Comprehensive Plan establishes policies to encourage the construction of major new residential developments and, as these policies relate to the proposed project, the encouragement of residential use as a component of mixed-use projects extending through the Chinatown area. 10 DCMR § 903.2(b)&(e); *see also* 10 DCMR § 927.1(b)(noting that an objective for the Chinatown area is the concentration of "substantial housing").

IV.
Area Variance Considerations

The standard for obtaining an area variance is well settled. In the leading case of *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972), the Court interpreted D.C. Code, §§ 5-420, 5-424(g)(3) and the corresponding provision of the Zoning Regulations, 11 D.C.M.R. § 3103.2, which permits the Board to grant variances, pursuant to the following:

> Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial determent to the public good and without substantially impairing the intent, purpose, and integrity of the zoning plan as embodied in the zoning regulations and map.

The above regulation sets up separate statutory requisites to the granting of variances, i.e., a showing of "practical difficulties" or "undue hardship". The court adopted the dichotomy recognized in other jurisdictions between area variances and use variances, applying the statutory requisite of "practical difficulties" to a showing of the former, and applying the separate statutory requisite of "undue hardship" to a showing of the latter. *Id.* at 541. Because "an area variance, relating to restrictions such as side yard, rear yard, frontage, set-back or minimum lot requirements, does not alter the character of the zoned district, whereas a use variance seeks a use ordinarily prohibited in the particular district", the court held that a "more stringent showing is warranted with respect to the more drastic relief inherent in a use variance". *Id.* at 541. In short, the Board is

empowered to grant an area variance where it finds three conditions:

> (1) The property is unique because, *inter alia*, of its size, shape or topography;
>
> (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied;
>
> (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

Roumel v. District of Columbia Bd. of Zoning, 417 A.2d 405, 408 (D.C. 1980); *see also Association For The Preservation Of 1700 Block Of N Street, N.W. v. Board of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978)(the applicant must demonstrate that compliance with the area restriction is unduly burdensome and the practical difficulties are unique to the property).

Reviewing the criteria for an area variance recently, the Court, in *Capital Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 941-942 (D.C. 1987), stated that the

> threshold requirement to show that the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that "the circumstances which create the hardship *uniquely* affect the *petitioner's property* * * * ." *Taylor, supra* note 6, 308 A.2d at 234 (emphasis in original).

Id.; see also Russell v. Board of Zoning Adjustment, supra, 402 A.2d at 1235 (the requirement that the practical difficulty be caused by the uniqueness of the property "insures relief for problems peculiarly related to the * * * land or structure, and not shared by other property in the neighborhood, thus avoiding a de facto amendment of zoning laws.").

In other words, AvalonBay must demonstrate that compliance with the area restrictions is unduly burdensome and the practical difficulties are unique to the site. In finding an extraordinary or exceptional condition, the Board may rely upon a confluence of factors.

In this case, the site is indeed unique, as that term has been applied to area variances, and a practical difficulty does result from the strict application of the Zoning Regulations. Moreover, the requested variances can be accurately described as minimal. The variance required for the retail requirement is only 542 square feet, an eight percent (8%) reduction in the amount of retail provided. With regard to the residential recreation space variance, although a total variance is necessary, recreation space will be provided, as residents will be permitted to use recreation space, including a community room, business center, fitness facility and roof-top deck, at AvalonBay's project at 770 5th Street, N.W. Finally, only a partial variance is needed from the roof structure set back requirements for the northern portion of the roof structure.

Uniqueness and Practical Difficulty. The practical difficulty in complying with the Zoning Regulations is due to the unique shallowness of the depth of the Property and the impact of the closed alley to the rear of the site. The Property is a mere eighty-five feet (85') deep. The proposed building is approximately sixty-five feet (65') deep, with the remaining twenty feet (20') being used for the required loading, as well as the entrance ramp to the garage, exhaust for the garage, and trash dumpsters and van parking. Given the requirements for these exterior features, it is not possible to extend the depth of the building. A further limiting factor with regard to the depth of the Property is the fact that AvalonBay was required to grant the District a three and one quarter foot (3.25') easement along the rear of the Property adjacent to the former north-south alley, so as to create a twenty foot (20') right-of-way for the District along the former alley for construction of Gallery I.

These conditions do not exist with regard to any other properties in the area.

The exceptional and unique condition presented by the shallowness of the Property has created practical difficulty in designing an efficient building which fully complies with the Zoning Regulations. In other words, strict application of the Zoning Regulations is unduly burdensome due to the uniqueness of the Property. Extensive efforts have been made in designing the proposed building to maximize the efficiency of the building in the limited space available. For example, the below-grade parking garage extends to the rear Property line to maximize the number of parking spaces provided. The depth of the proposed building has been designed so as to both maximize the size of the building, while at the same time providing the required rear yard and adequate space for loading, trash and exhaust features adjacent to the alley.

Further evidence of the extensive efforts made to maximize the efficiency of the proposed building is the layout of the first floor of the building. The residential lobby, mailroom, storage, concierge, fire control room and compact room, as well as the service lobby and elevator core, have been compacted to the north end of the proposed building so as to provide for the greatest amount of retail space. By creating a large, uninterrupted retail space, AvalonBay will be able to accommodate either a large retail user, such as a restaurant, or several smaller retail users. In contrast, had the proposed building been designed so as to centralize the residential lobby and related residential components on the ground floor, not only would the amount of retail space provided have been reduced, but such a layout would have provided for only several smaller retail users, rather one contiguous user.

The proposed building elevators have been designed so that a single elevator core is used for both the parking garage and residential apartments above.

With regard to the residential component of the proposed building, the AvalonBay has eliminated a previously proposed additional floor of residential use, thus reducing the number of apartments from 144 to 132. Doing so has allowed the apartment units to be designed to have higher ceilings, thus providing more marketable units.[2] Emergency exit stairwells are provided at either end of the hallways of the residential floors. Finally, under the current plans, the condensor units for the apartments are located on the roof.

Locating the condenser units on the roof, combined with the required easement in favor of the District of Columbia, eliminates area that could have been utilized for residential recreation space on site.

Retail Space Variance. Because of the Property's location along 6th Street, N.W. within a distance of one-half (1/2) block from H Street, N.W., the proposed development must include at least 0.5 FAR of retail, service and entertainment uses from Sections 1710 and 1711 of the Zoning Regulations. 11 DCMR § 1705.3. The Property contains 12,750 square feet, resulting in a required retail space for the Property of 6,375 square feet. Of the required 6,375 square feet, 5,833 is provided. Thus the proposed building is a mere 542 square feet short of fulfilling this requirement.

Given that the retail must be provided at the ground level, the practical difficulty in complying with the retail provision of the Zoning Regulations arises directly from the shallowness of the Property. As explained above, the proposed building has been designed so as to maximize the efficiency of the building. The building footprint cannot be enlarged by eliminating a portion of the

[2] Reducing the number of apartment units has further served to decrease the demand on parking. AvalonBay expects that many of its tenants will use Metro and/or will take advantage of parking made available at their places of employment. Regardless of these expectations, AvalonBay is sensitive to the parking needs of both its tenants, as well as the effect of its proposed development on parking in the surrounding area. Consequently, AvalonBay is providing twice as much parking as required by the Zoning Regulations.

rear yard, as such design would eliminate space necessary for loading, trash receptacles, the former alley easement and the garage entrance, resulting in the need for additional zoning relief.

Variance from the Residential Recreation Requirement. In addition to the required 0.5 FAR of retail space, there is a requirement for residential recreation space equal to five percent (5%) of the residential gross floor area. 11 DCMR § 1706.4(f). At least fifty percent (50%) of the residential recreation space must be provided outdoors. 11 DCMR § 731.8.

As stated above, 132 residential units will be provided on floors two through twelve of the proposed building. The residential portion of the building comprises 111,892 square feet of the total 1117,725 gross square feet in the proposed building. Accordingly, there is a requirement for 5,595 square feet of residential recreation space, of which 2,797 square feet must be located outdoors. Due to the shallowness of the Property, as outlined below, strict application of the residential recreation space requirement results in a practical difficulty.

It is not possible to locate any residential recreation space within the building. The residential recreation space cannot be located on the ground level of the proposed building, as the retail component must be located on this level. The residential floors are also not suitable for the residential recreation space. The residential floors of the proposed building each contain 10,172 gross square feet, with a total of 8,814 net useable square feet. Thus, in order to meet the residential recreation requirement, AvalonBay would have to devote almost an entire floor to residential recreation use, thereby eliminating up to twelve (12) apartment units. In designing the proposed building, AvalonBay reduced the number of apartment units from 144 to 132 so as to create more attractive and desirable living space. The elimination of additional units would make the development of the Property more difficult by affecting the critical mass necessary to support the cost of development.

In addition to adversely affecting the economic viability of the proposed development, this further reduction in the residential component would be contrary to the intent of the DD to increase the amount of housing available Downtown, including Chinatown. Finally, if AvalonBay were to convert a floor or partial floor from residential apartment use to residential recreation use, a variance would still be necessary, as no recreation space would be provided outdoors.

Just as it is not feasible to locate any residential recreation space within the proposed building, the residential recreation space cannot be provided outdoors on the Property. It is not possible to located the residential recreation space in the rear yard, as the required loading, trash receptacles and garage entrance must be located in the rear yard. Moreover, AvalonBay is precluded from locating residential recreation space in the area adjacent to the former alley since that area is within an easement provided to the District of Columbia when the alley was closed.

As depicted on the roof plan, it is not possible to located the residential recreation space on the rooftop, as the rooftop is used for the penthouse and compressor units for the apartments. In turn, it is not possible to relocate the compressor units to the rear yard or the garage, given the need to provide parking and loading.

Roof Structure Set Back Requirement. Roof structures in the DD/C-2-C zone district must comply with the provisions of Section 411 of the Zoning Regulations, including the requirements that: (a) all penthouses and mechanical equipment be placed in one (1) enclosure; and (b) enclosing walls be of equal height and rise vertically to a roof. 11 DCMR §§ 770.6(a) and 411.3 & 5. Additionally, a roof structure must be set back from all exterior walls by a distance at least equal to its height above the roof upon which it is located. 11 DCMR § 770.6(b).

Again, the practical difficulty in complying with the roof structure requirements arises from

the shallowness of the Property. So as to maximize efficiency, one elevator core servicing both the garage and the residential units has been provided. Additionally, emergency stairwell exits have been placed at either end of the building. These elements (i.e., elevator core and stairwells) have been located so as not to adversely affect the efficiency of the garage, ground floor or residential apartment configurations.

The roof structure will be eighteen feet, six inches (18'6"), resulting in a corresponding set-back requirement of eighteen feet, six inches (18'6"). Naturally, access must be provided to the rooftop and will be provided through the stairwell located on the north side of the proposed building, as this stairwell is closest to the elevator core. However, because of the requirements that all penthouses be included in one (1) roof structure and that enclosing walls be of equal height and rise vertically, the inclusion of the staircase penthouse in the roof structure results in a set back of only six feet (6') on the north side of the building.

Economic Considerations. As demonstrated by the above discussion, the physical limitations of the Property not only results in a practical difficulty, they prevent full compliance with the Zoning Regulations. Even assuming that, despite the uniqueness of the Property, the proposed building could be designed so as to fully comply with the Zoning Regulations, full compliance with the Regulations would render development of the Property economically infeasible, as it would require significant reconfiguration of the building and a corresponding significant reduction in the number of apartment units provided. Such consideration of the economic viability of the proposed project, which consideration has contributed to the need of AvalonBay to seek relief, is relevant to the practical difficulty aspect of the area variance issue.

In *Tyler v. District of Columbia Board of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C.

1992), the court held that the Board could rely on economic factors to evaluate this issue, even if it was not relevant to the uniqueness issue. *Id.* at 1365-1366. In *Tyler*, the court held that the Board had failed to demonstrate how the admittedly unique factors applicable to the property in that case also created practical difficulties. Rejecting petitioners' claim that the Board could not rely on economic factors, the court merely stated that it could not determine whether the decision was based on non-economic or economic factors where, in its decision, the Board had rejected the economic justification. *Id.* at p. 1365-1366. With regard to economic considerations, the court said that it eliminated, in its decision in *Gilmartin v. Board of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990), "any doubt that '[e]conomic use of property' may properly be 'considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in [area] variance cases . . . '". *Id.* at 1367; *see also Wolf v. Board of Zoning Adjustment*, 397 A.2d 936, 943 (D.C. 1979) (Board properly granted area variance to permit conversion to three-unit apartment where "marketability" of property would otherwise be "unfeasible" and investment would yield loss rather than profit). *See generally* Arden H. Rathkopf & Darren A. Rathkopf, The Law of Zoning & Planning § 38.04, at 38-48 to 38-53 (1991) (discussing need to prove "significant economic injury" in order to show practical difficulty).

In the instant matter, reconfiguring the proposed building so as to fully comply with the retail, residential recreation space and roof structure setback requirements is not only infeasible due to the shallowness of the Property, the requisite reduction in apartment units would render the Property unmarketable and the development economically infeasible.

This is not a situation where the applicant has sought to manufacture unique conditions. To be certain, the unique conditions of the Property make it both physically impossible, as well as

economically infeasible, to design a building which fully complies with the Zoning Regulations. Those conditions, namely the shallow depth of the Property, existed prior to the time the Property was purchased by AvalonBay and are the primary reason why the project cannot be constructed without resort to the Board.

The Proposed Project Will Not Have an Adverse Impact on the Surrounding Neighborhood. Additionally, the proposed project will not substantially impair the intent, purpose and integrity of the zone plan. To the contrary, the requested relief will allow AvalonBay to develop the Property in a manner which furthers the goals of both the Zoning Regulations, as well as the Comprehensive Plan. Thus, not only is the requested relief consistent with the intent, purpose and integrity of the zone plan, the proposed development will benefit the surrounding area by providing additional housing and retail uses.

AvalonBay proposes to provide 5,833 square feet, or .46 FAR, of retail space on the ground level. The required retail space is 6,375 square feet, resulting in a 542 square foot shortage, or the need for an eight percent (8%) variance. Thus, the relief from the retail requirement is minimal.

The residential retail requirement for the proposed project is 5,790 square feet. The residents of the project will be provided access to the approximately 7,000 square feet of residential recreation space located across the alley in Gallery I. The residential recreation space available at Gallery I include a fitness center of approximately 2,000 square feet and a roof top deck containing approximately 5,000 square feet. By providing such access, AvalonBay is complying with the spirit and intent of the Zoning Regulations.

The roof structure setback relief will not impair the light or air available to surrounding properties. The property to the east of the northern portion of the proposed building is separated from the proposed building by an 16'75" alleyway, in addition to the 20'7" rear yard of the proposed building. The property to the north of the proposed building is currently vacant, and thus unaffected by the requested variance.

The goal of the DD is the creation of a lively downtown with active pedestrian use. The downtown area has many recreational and entertainment activities unassociated with residential buildings that are available to residents. The Property is located in the heart of these activities, as it is situated within one block of the MCI center and the corresponding retail and restaurants. Additionally, the Property is within walking distance of several museums. By virtue of the Property's location, ample public recreation space is available to the residents of the proposed project. Additionally, the proposed Gallery Place mixed-use development is located directly across the street from the Property in Square 455, Lot 49. Upon completion, amenities available at Gallery Place will include retail, restaurants, a fitness facility and a movie theater. Because of the many recreational and entertainment activities available (and soon to be available) in the immediate area of the Property, a reduction in the recreational component of the proposed building will not cause a concomitant reduction in recreational opportunities for building residents.

The proposed building will further the goals of creating a "living downtown", by providing much needed housing in the downtown area. Additionally, the proposed building will further the goals of creating additional housing and mixed uses in the Chinatown area of Downtown, as well as the goal of crating major new residential developments.

Given the foregoing factors and the fact that the proposed variances are minimal, the

requested variances should be granted.

V.
Exhibits In Support of the Application

Exhibit A: Self -Certification Form

Exhibit B: Site Map

Exhibit C: Architectural Plans

Exhibit D: Alternative roof structure design

Exhibit E: Resume of Architect

VI.
Witnesses

A. Richard Koch
Senior Development Director
Avalon Bay Communities, Inc.

B. Sami Kirkdil, AIA
KG&I Architectural Design Group

VII.
Conclusion

For the above reasons, AvalonBay Communities, Inc. respectfully requests that the Board grant the relief sought. Given the lack of adverse impact on the surrounding area, AvalonBay Communities, Inc. requests a bench decision, if the Board feels such a decision is justified.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI, L.L.P.

Richard B. Nettler by JRZ

Jeannine Rustad Zigner

1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006
(202) 775-0725

OUTLINE OF TESTIMONY OF ARCHITECTS

I. Introduction

- A. Qualifications
- B. Summary

II. Consistency with requirements for area variances

- A. Uniqueness / Practical Difficulty
  1. Shallowness of depth of the Property
  2. Architectural constraints
  3. Market constraints
- B. Zone Plan

III. Lack of Adverse Impact on Neighborhood



Form 1 - BZA Certification - Side 1 (Revised 03/07/00)

ZONING SELF-CERTIFICATION FORM

Date	Project Address(es)			
10/10/01	719-735 6th Street, N.W.			
Square 486	Lot(s) 10-13 & 804-808	Zone District(s) DD/C-2-C	ANC(s)/Single Member District(s) 6A/01	Case No.

CERTIFICATION

The undersigned agent hereby certifies that the following zoning relief is required from the Board of Zoning Adjustment in this matter pursuant to:

☐	Use Variance DCMR 11 §3103	☒	Area Variance DCMR 11 §3103	☐	Special Exception DCMR 11 §3104

which is provided for by DCMR Title 11 Section No(s).: 3103, 1706.4(A) and 1705.3

Pursuant to 11 DCMR §3113.2, the undersigned agent certifies that:

(1) the agent is duly licensed to practice law or architecture in the District of Columbia;
(2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia;
(3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief as a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the Board of Zoning Adjustment.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

Owner's Signature	Owner's Name (Please Print)
Richard Koch Sr. Dir.	Richard Koch
Agent's Signature	Agent's Name (Please Print)
Richard B. Nettler	Richard B. Nettler/Jeannine Rustad Zigner

D.C. Bar No.	929471/451110	or	Architect Registration No.	

OFFICE OF ZONING DETERMINATION

(DCMR Title 11 §3113.2)

Based upon review of the application and self-certification, this application is

☐	Accepted for filing.
☐	Referred to the Office of the Zoning Administrator, Department of Consumer and Regulatory Affairs, for determination of proper zoning relief required.
☐	Rejected for failure to comply with the provisions of ☐ DCMR Title 11 §3113.2; or ☐ DCMR Title 11 Zoning Regulations. Explanation _____

Signature		Date	

Jerrily R. Kress, FAIA - Director of the Office of Zoning

441 4th Street, N.W. Ste. 210-S, Washington, D.C. 20001
(202) 727-6311 * www.dcoz.dcgov.org

Side 2

INSTRUCTIONS

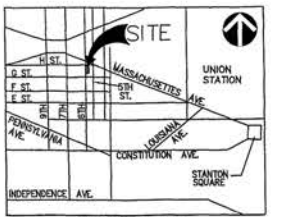
Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on BZA Certification Form 1. All certification forms must be completely filled out (front **and** back) and be typewritten or legibly printed. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of paper to complete this form.

2. Complete one self-certification form per each application filed. Present this form with the BZA Form 2 application to the Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

ITEM	EXISTING	REQUIRED	ALLOWED	PROVIDED	VARIANCE Deviation/Percent
Lot Area	12,750 s.f.	N/A	N/A	12,750 s.f.	NONE
Lot Width	150'	N/A	N/A	150'	NONE
Lot Occupancy	N/A	N/A	80%	80%	NONE
Floor Area Ratio (FAR)	N/A	N/A	No Max -- see 11 DCMR §1706.7(b)	9.54	NONE
Parking Spaces	N/A	37	N/A	50	NONE
Loading Berths	N/A	1 @ 30' 1 @ 55'	N/A	1 @ 30' 1 @ 55'	NONE
Front Yard	N/A	0	N/A	0	NONE
Rear Yard	N/A	15'	N/A	20'7"	NONE
Side Yard	N/A	0	N/A	0	NONE
Court, Open	N/A	0	N/A	0	NONE
Court, Closed	N/A	0	N/A	0	NONE





Vicinity Map

6TH STREET NW
(100' WIDE PUBLIC RIGHT-OF-WAY)

PROPOSED JBG ASSEMBLAGE

G PLACE NW

EXISTING 3 STORY

GALLERY II
6TH STREET SITE

PARKING LOT
BILL LEE, OWNER

G STREET NW
(90' WIDE PUBLIC RIGHT-OF-WAY)

H STREET NW
(90' WIDE PUBLIC RIGHT-OF-WAY)

PUBLIC ALLEY 16.75' WIDE

LOT 880

GALLERY PHASE I
770 5TH STREET

RED ROOF INN

5TH STREET NW
(80' WIDE PUBLIC RIGHT-OF-WAY)

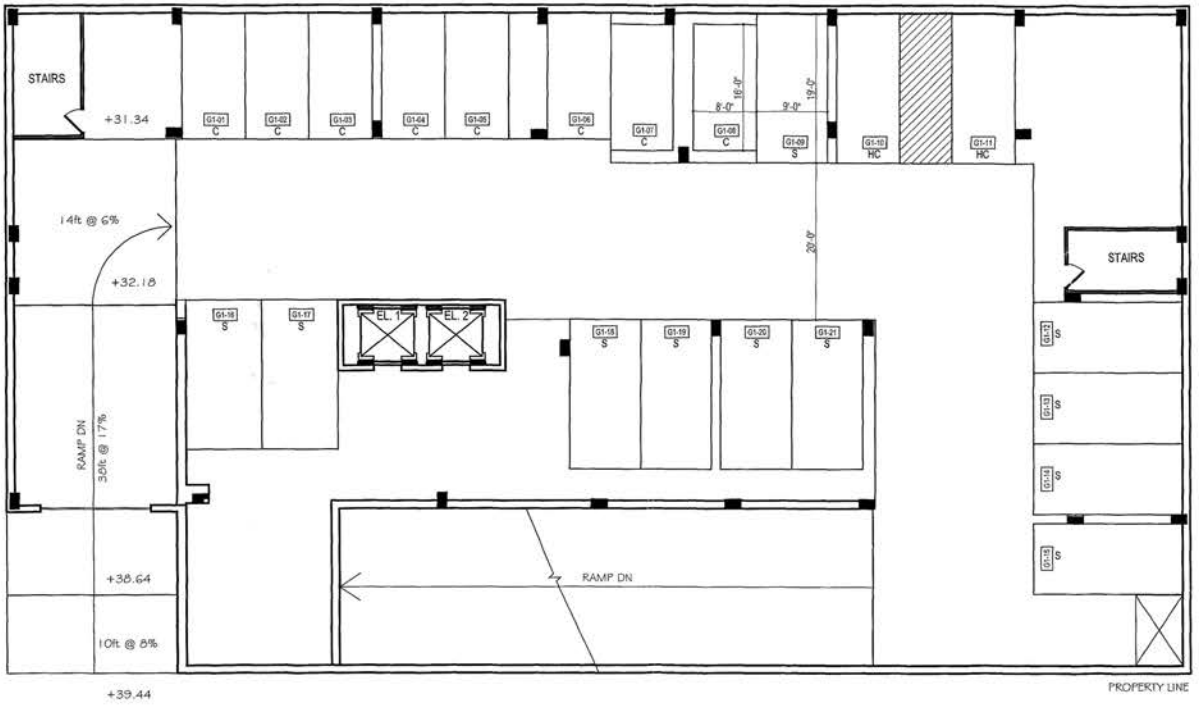
SKG Architects & Planners, LLC

GALLERY II
Apartments
WASHINGTON D.C

Avalon Bay Communities, Inc

A0





PARKING COUNT - G1
21 SPACES

COMPACT = 8
STANDARD = 11
HANDICAP = 2

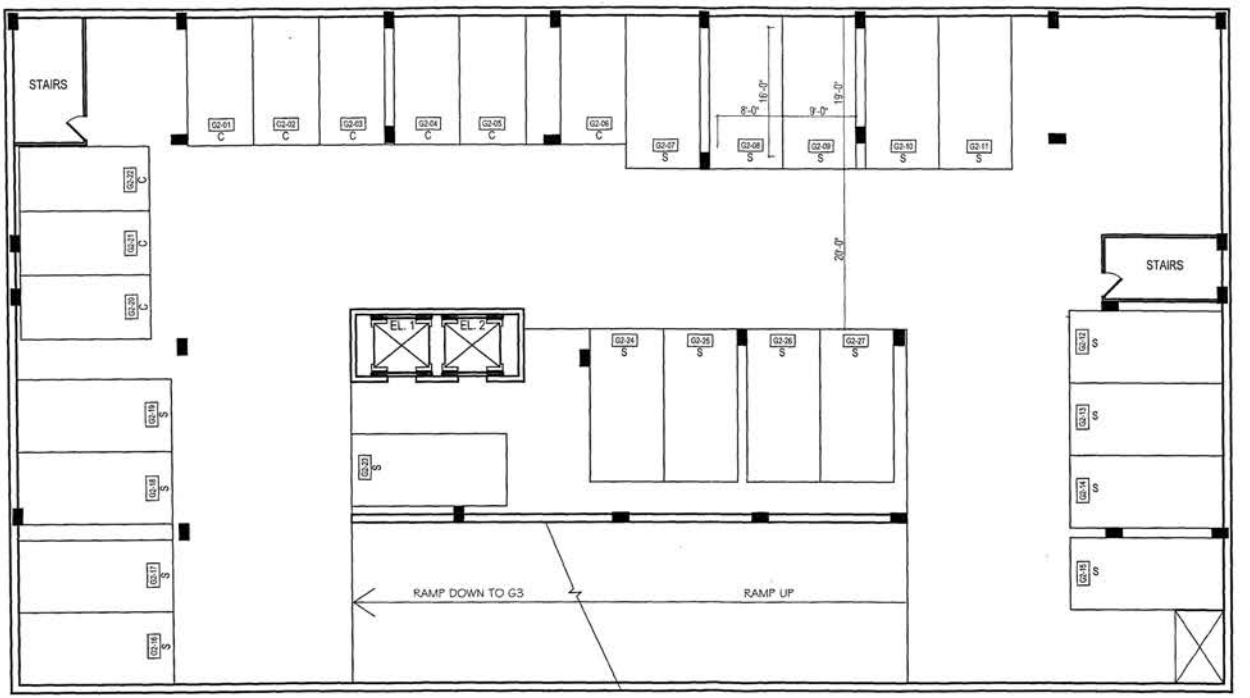
Garage Floor G1 Plan

SKG Architects & Planners, LLC

GALLERY II
Apartments
WASHINGTON D.C

Avalon Bay Communities, Inc

A1



PARKING COUNT - G2
27 SPACES

COMPACT = 9
STANDARD = 18

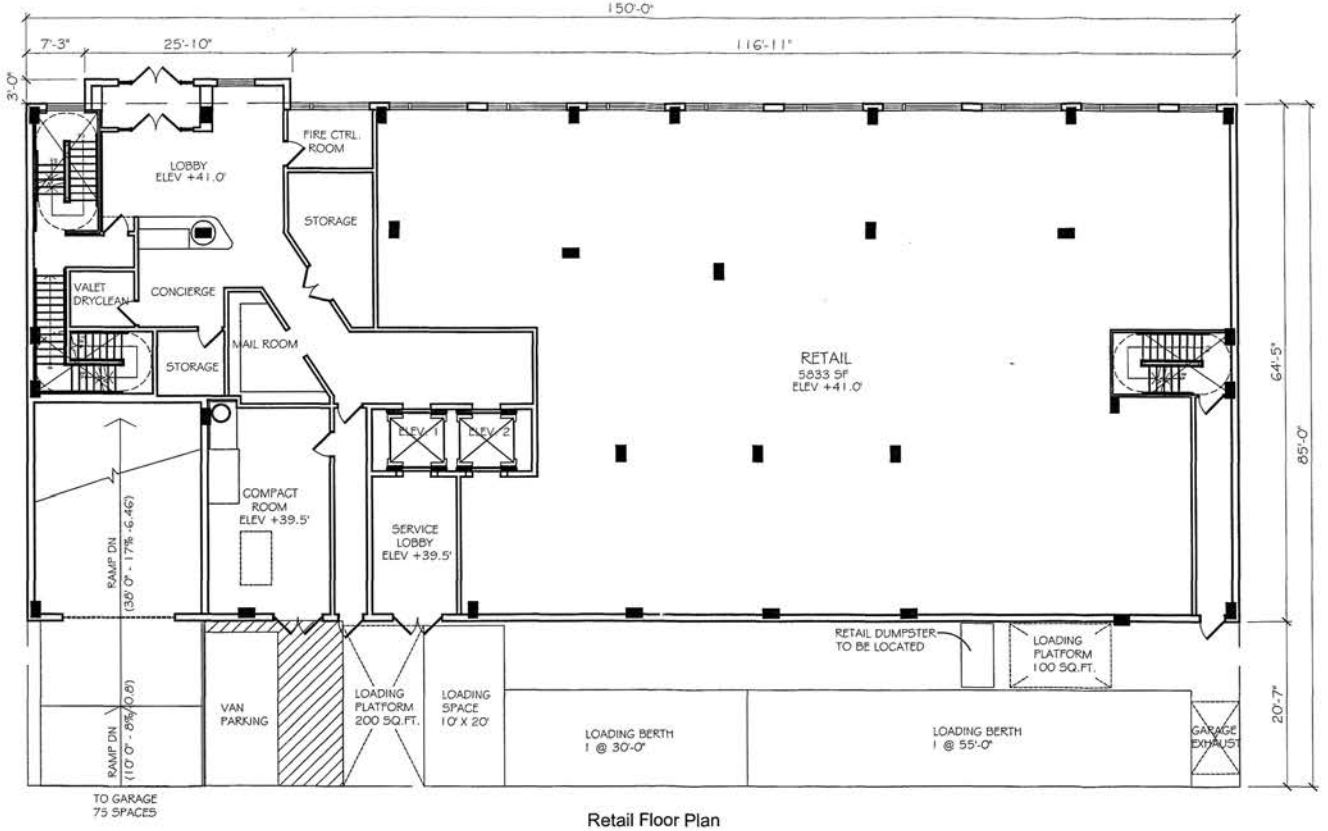
Garage Floor G2 & G3 Plans

SKG Architects & Planners, LLC

GALLERY II
Apartments
WASHINGTON D.C

Avalon Bay Communities, Inc

A2



Retail Floor Plan

SKG Architects & Planners, LLC

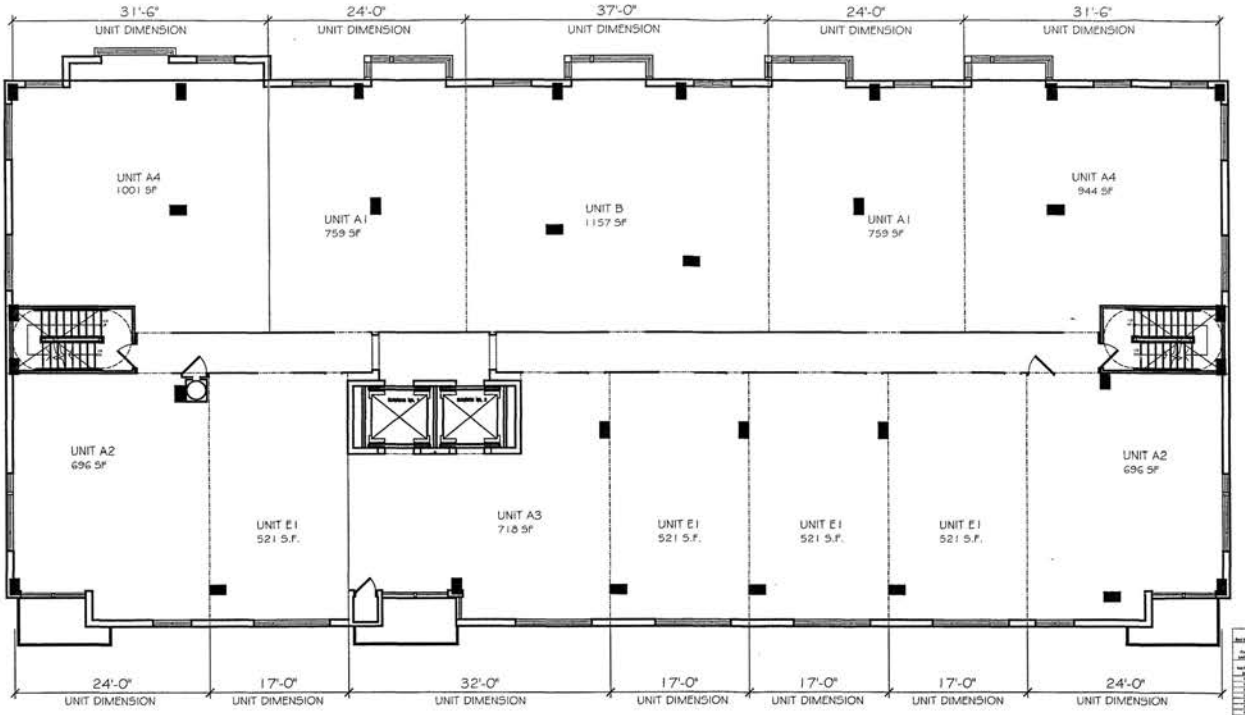
GALLERY II

Apartments

WASHINGTON D.C

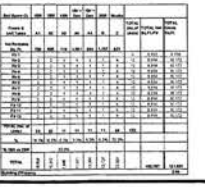
Avalon Bay Communities, Inc

A3



Typical Floor Plan

Unit Analysis

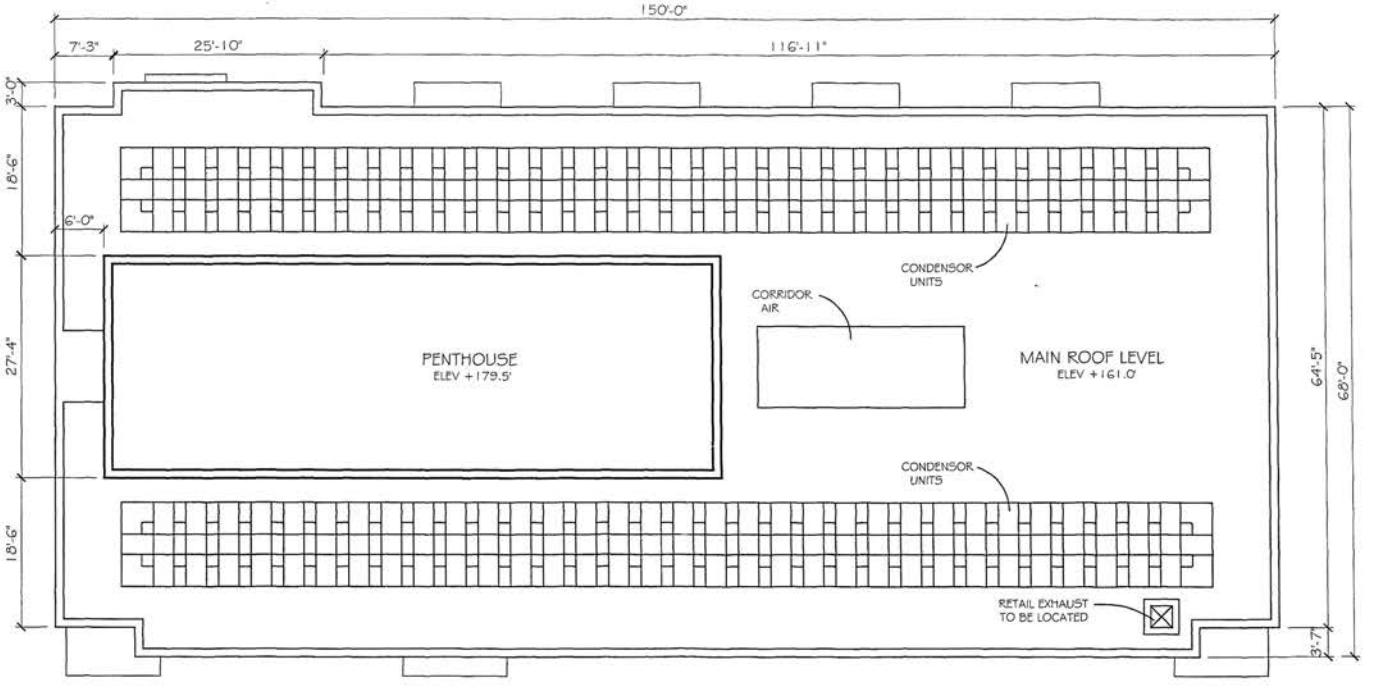


SKG Architects & Planners, LLC

GALLERY II
Apartments
WASHINGTON D.C

Avalon Bay Communities, Inc

A4
DATE 11.14.01



Roof Plan

SKG Architects & Planners, LLC

GALLERY II
Apartments
WASHINGTON D.C

Avalon Bay Communities, Inc

A5



West Elevation

SKG Architects & Planners, LLC

GALLERY II

Apartments

WASHINGTON D.C

Avalon Bay Communities, Inc

A6



East Elevation

SKG Architects & Planners, LLC

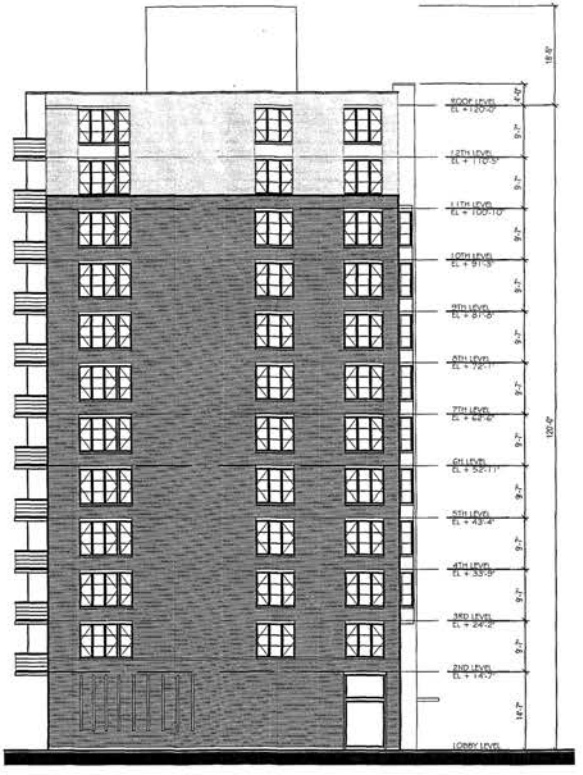
GALLERY II

Apartments

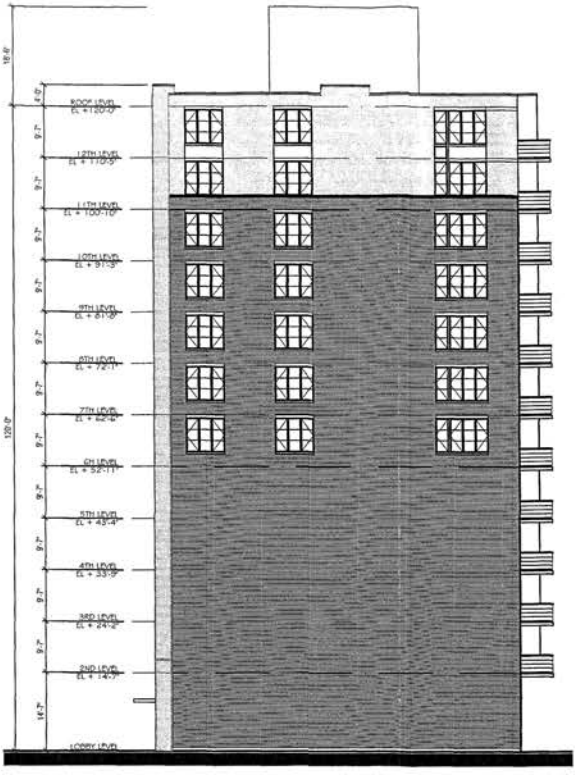
WASHINGTON D.C

Avalon Bay Communities, Inc

A7



North Elevation



South Elevation

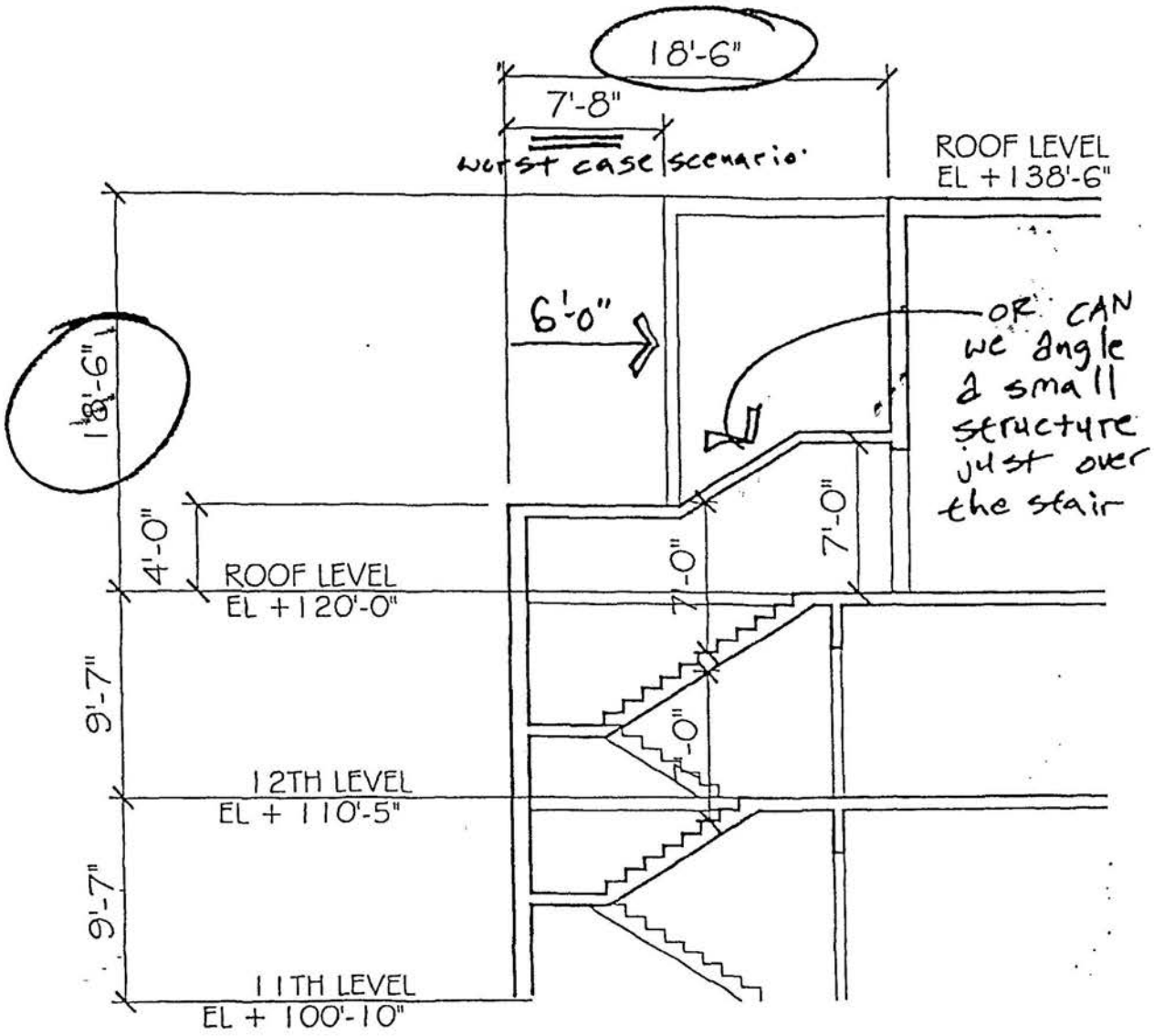
SKG Architects & Planners, LLC

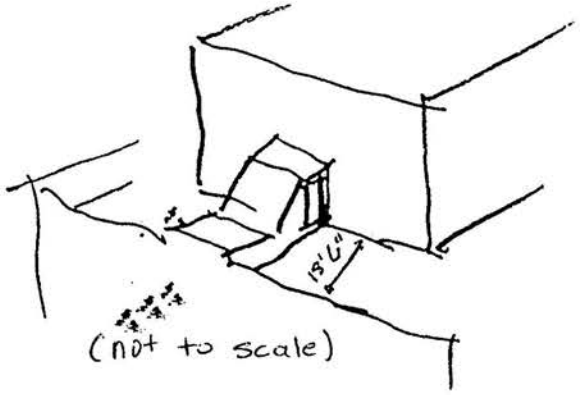
GALLERY II
Apartments
WASHINGTON DC

Avalon Bay Communities, Inc

A8







AVA.13 GALLERY 11

STAIR SECTION to ROOF

scale: 1/8" = 1'-0"



Sami Kirkdil, AIA

President
SKG Architects and Planners, LLC

Mr. Kirkdil has been practicing architecture for 20 years. He is a leader in the creation of innovative housing typologies, and directs a residential design practice both high-density and low-density housing communities. His ability to relate architecture to the economics of building and to the marketability of design solutions has been the key to his success. Mr. Kirkdil's designs have received both local and national awards, attesting to his understanding of the relationship between the built form, the community and his focused leadership in the residential marketplace. His expertise spans the design of both new and renovated housing, incorporating full understanding of Fair Housing, ADA, and other pertinent Code requirements. Mr. Kirkdil currently serves on the AIA Housing Committee and as a Finest for Family Living judge.

Along with his experience in housing, Mr. Kirkdil has designed successful institutional buildings, commercial buildings, office buildings, and mixed-use projects.

Mr. Kirkdil is the founding partner of **SKG Architects and Planners**. He was with Torti Gallas - CHK for 17 years, where he was a Principal and Director of the Residential Design Studio. He left CHK in 1999 to form SKG with his two partners.

Mr. Kirkdil's project experience includes:

- **Manhatten:** Hi-rise upscale condominium, NW Washington, D.C.
- **Woodmont:** Hi-rise upscale condominium, Bethesda, MD.
- **Edgemoor Condominiums:** Hi-rise upscale condominium, Bethesda, MD.
- **Capitol Hill Towers:** Hi-Rise residential, NE Washington, D.C.
- **Virginia Center:** Rental elevator apartments, Fairfax, VA.
- **Alexan:** Rental apartments, Alexandria, VA.
- **The Alexander House Apartments:** Silver Spring, MD.
- **Strathmore Courts:** H.O.C Montgomery County, MD.
- **King Farm Condominium:** Residential condominiums, Rockville, MD.
- **Walter E. Washington Estate Town Homes:** Crawford, Edgewood Management, Washington, D.C.
- **Bolling Air Force Base Military Family Housing:** Washington, D.C.
- **Kemer Country:** Phase IV of an existing luxury residential community, Istanbul, Turkey.
- **Montgomery Lane:** Luxury town homes, Bethesda, MD.
- **Avalon at Arlington Ridge:** Mixed income neighborhood apartments, Arlington, VA.
- **Stratford Courthouse and Sratford Court:** Low-rise and hi-rise residential, Reston, VA.
- **Parc Somerset:** Luxury condominiums, Chevy Chase, MD.
- **Boston Street Apartments:** Hi-rise residential and town homes, Baltimore, MD.
- **Crescent at Worldgate:** Low-Rise apartments
- Fairfax, VA.
- **Woodlea Mill Development:** Single family homes, McLean, VA.
- **Tysons Village:** 2-over-2 condominiums, Tysons Corner, VA.
- **Old Town Green:** 2-over-2 town homes, Alexandria, VA.
- **Whittier Park:** Town homes, Falls Church, VA.
- **Hudson Pointe:** Residential, Jersey City, NJ.
- **Millbrook II:** Town homes and garden apartments, Alexandria,VA.
- **Portner's Landing:** Urban mixed-use residential Reston, VA.
- **Montgomery College High Technology Science Center:** Germantown, MD.
- **Frederick Community College Learning Resources Building:** Frederick, MD
- **1919 South Eads Street Office Building:** Arlington, VA.
- **Arlington Courthouse Plaza:** Arlington, VA.
- **North Village Revitalization:** Town homes, 7 and 6-plex buildings, and 2-over-2 units.
- **Town Center Triangle Garden Apartments:** Columbia, MD.
- **Forest River Apartments:** Salem, MA.