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December 19, 2001

BY HAND
Ms. Beverley A. Bailey
Office of Zoning
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Application No. 16809

Dear Ms. Bailey:

Enclosed you will the proposed Summary Order which we have prepared for the above-referenced matter. For your convenience, I have enclosed a diskette containing the order, which is saved as "BZA 16809 Summary Order". Also enclosed is a copy of the site plan for Gallery I and Gallery II, which you requested for inclusion in the record at the conclusion of the December 18, 2001 hearing.

Should you require any additional information or have any questions regarding the enclosed material, please do not hesitate to contact me.

Thank you for your assistance in this matter.

Sincerely,

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

Jeannine Rustad Zigner

Enclosures (as stated)
cc: Mr. Richard Koch (w/ Summary Order)
Richard B. Nettler, Esquire

BZA
Case No. 16809
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16809
EXHIBIT NO.31

Government of the District of Columbia
Board of Zoning Adjustment

Application No. 16809 of AvalonBay Communities, Inc., pursuant to 11 D.C.M.R. 3103.2 for 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, respectively, so as to permit the construction of a mixed-use development consisting of residential and retail uses at Square 486, Lots 11-13 and 804-808, 719-735 6th Street, N.W.

HEARING DATE: December 18, 2001
DECISION DATE: December 18, 2001 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

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

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site. The application was also referred to the Office of Planning (OP) for review and report.

The site of the application is located within the jurisdiction of ANC 6A. ANC 6A, which is automatically a party to this application, discussed the application at its December 6, 2001 meeting. However, there was not a quorum present at the time the application was considered by the ANC and ANC 6A did not submit an official position on the application.

The application was supported by the Office of Planning. Letters of support were submitted by Councilmember Sharon Ambrose and the Downtown Housing Now Committee.

As directed by 11 DCMR 3119.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for area variances from the strict application of the requirements of 11 DCMR Sections 770.6(b), 1706.4 and 1705.3. No person or entity appeared at the pubic hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the statements in support of the application and the practical difficulties in developing the property, which arise from the uniqueness of the property, the Board concludes that adjudication by summary order is appropriate.

Based upon the record before the Board, the Board finds that the applicant has met the burden of proof, pursuant to 11 DCMR 3103.2, that there exists an exception or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations. The Board further finds that the 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 is **GRANTED**.

The Board further strongly recommends that the applicant:

> (1) Incorporate appropriate articulation into the design of the penthouse structure so as to mitigate the roof structure set back variance, including the incorporation of materials which are matching and complementary to the building; and
>
> (2) Design the rear entrance of the proposed building to provide a safe, aesthetic passage for the residents of the proposed project to the residential recreational facilities to be made available at the applicant's property at 750 5th Street, N.W. For example, the entryway should not open onto the loading facilities for the building and additional lighting and security should be included.

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 further findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, in light of the findings made herein, and is appropriate in this case.

VOTE: 4-0-1 (Geoffrey Griffis, David Levy, Anne Renshaw and Peter May to approve.)

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

Each concurring member has approved the issuance of this Order.

FINAL DATE OF ORDER: