GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16809 of AvalonBay Communities, Inc., pursuant to 11 DCMR § 3103.2 for a variance from the residential recreation space requirements under subsection 1706.4(f), a variance from the roof structure set back requirements under subsection 770.6(b), and a variance from the retail space requirement under subsection 1705.3 to construct an apartment building in a DD/C-2-C District at premises 719-735 6th Street, N.W. (Square 486, Lots 11-13, 804 – 808).

Note: The application was amended to include variance relief from the roof structure set back requirements under subsection 770.6(b).

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, 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, submitted a report to the Board (Exhibit No. 26). The ANC voted unanimously on December 6, 2001, not to support the applicant's request until the matter of incorporating the Chinatown design elements is satisfied in accordance with the Chinatown DD/C-2-C designation. Although the Board considered the views of ANC 6A, the Board was unable to give the report the "great weight" to which it is entitled because the report did not follow the guidelines specified in section 3115 of the Zoning Regulations.

The abutting property owner to the north of the site, William Lee, presented testimony at the hearing. Mr. Lee, a former member of the Chinatown Steering Committee, indicated that it is important for the Applicant to work in consultation with the Committee to incorporate design elements in the project that are in keeping with the Chinatown area. The Applicant informed the Board that good faith efforts would be made in this regard.

BZA
Case No. 16809
Exhibit No. 32
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EXHIBIT NO.32

The Office of Planning supported the application (Exhibit No. 25). Councilmember Sharon Ambrose and the Downtown Housing Now Committee submitted letters of support (Exhibits 27 and 28, respectively).

As directed by 11 DCMR § 3119.2, the Board 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 §§ 770.6(b), 1706.4(f) 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 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 exceptional 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 be **GRANTED**, subject to the following **CONDITIONS:**

> (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, with proper pedestrian clearance, for the residents of the 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 of the building and additional lighting and security should be included.

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: 4-0-1 (Geoffrey H. Griffis, David W. Levy, Anne Mohnkern Renshaw, and Peter G. May to approve; the third mayoral appointee not sitting on the Board, not voting)

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

Each member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: DEC 2 8 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/12.20.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16809

As Director of the Office of Zoning, I hereby certify and attest that on DEC 2 8 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:

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