GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16871 of the JBG Companies' affiliate, JBG/JER 13th & N, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the rear yard requirements under section 404, for the construction of a new apartment house in the R-5-E District at premises 1300 N Street, N.W. (Square 245, Lot 30).

HEARING DATE: April 30, 2002
DECISION DATE:April 30, 2002

FINDINGS OF FACT:

1. The subject property is located in an R-5-E District at 1300 N Street, N.W., a vacant corner lot at the southwest corner of the intersection of 13th and N Streets, N.W. Lot 30 in Square 245 has a land area of 23,975 square feet.

2. The subject property has been excavated, and the foundation for the proposed apartment house is under construction. The lot was previously improved with a funeral home, law offices and a parking lot.

3. The property is abutted to the west by a 90-foot, crescent-shaped condominium apartment building known as the Crescent Towers, which occupies the corner lot at 14th and N Streets, N.W. To the south of the subject property is a 15-foot alley off of 13th Street, which alley widens to 30 feet in the interior of the square. To the south of the alley is a 90-foot apartment house known as the Sutton Plaza. Square 245 is also improved with a large hotel, the Washington Plaza, townhouses and nonconforming commercial uses.

4. The surrounding Logan Circle neighborhood is predominantly residential, and is developed with a variety of building types, including townhouses, flats, and apartments, including high-rise apartment buildings. The immediate neighborhood also includes hotels, two historic churches, and commercial corridors along 14th Street and 11th Street, N.W. One-and-one-half blocks to the south is Massachusetts Avenue, and beyond that, the commercial core of Washington and the region.

5. The Applicant proposes to construct a 90-foot, 6.0 FAR apartment house, which is permitted as a matter of right in the R-5-E District. The proposed building, however, does not have a rear yard of 22.5 feet, as required in the Zoning Regulations at 11 DCMR 404. Instead, the applicant is proposing to provide a landscaped, interior courtyard. In addition, the proposed project features a lower-scale "carriage house"

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element along the western property line with the massing of the bulk of the building along the 13th and N Street frontages.

6. The Applicant and its consultants and architect explained that the architect mistakenly believed that a court in lieu of a rear yard was allowed in R-5-E, just as it is allowed in the SP-2 zone, which was the zoning of the property for many years until the Logan Circle area was rezoned in 1999. At that time, the subject property and numerous other properties in the Logan Circle were rezoned from SP-2 to R-5-E. Both zones allow an apartment house to a maximum height of 90 feet and a maximum bulk of 6.0 FAR. The SP-2 zone allows a court to be constructed on corner lots in lieu of the otherwise-required rear yard.

7. The Applicant and the architect stated that they began planning for the development of the site when it was still zoned SP-2. They were aware that the property was rezoned R-5-E, however, they did not realize that a court is not permitted in lieu of a rear yard in the R-5-E District. They prepared architectural plans clearly showing a court in lieu of a rear yard and submitted them along with an application for a building permit to the Department of Consumer and Regulatory Affairs (DCRA). Although several meetings were held with DCRA staff to review the plans, through the City's Development Ambassador Program, DCRA staff did not identify the lack of a rear yard as an error. The Zoning Review Branch approved the plans in the fall of 2001. In December 2001, permits for excavating and foundation work were issued, and excavation was begun. That excavation was complete at the time of the public hearing in this case.

8. The Applicant stated that the error was only discovered in late April-early March by the law firm that was preparing a zoning opinion letter for purposes of a refinancing. As soon as the error was discovered, the Applicant filed for this requested variance.

9. The property has certain unique features and conditions which derive from its setting and its relationship to two neighboring apartment buildings. The adjacent apartment buildings located on both sides of the subject property to the south and the west are set back from the subject property in such a way that the air and light to each building which face the rear of the subject property would be compromised by a traditional rear yard setback on the subject property. The property to the east, the Crescent Towers Condominium, is developed with an unusual, crescent-shaped building which curves towards the subject property and features numerous units with views directed to the west side and the rear of the subject property. Similarly, the building to the south, the Sutton Plaza Apartments, steps back from the subject property at a mid-block location with many windows looking out to the rear of the subject property. Without the proposed variance, these rear elevation units of the adjacent buildings would offer only limited views consisting of 90-foot rear and side elevations of the proposed apartment building.

10. The aforementioned unusual setting and existing conditions provide a unique opportunity to provide a low-scale western elevation and a landscaped courtyard on the subject property which can serve as a major amenity for the future residents of the proposed building and can also greatly enhance the air and light of the units of the adjacent buildings which face the rear and western side of the subject property. Requiring the applicant to provide a rear yard would render it infeasible to provide such a courtyard and, as such, constitutes a practical difficulty.

11. The second situation affecting the property is the series of errors made by the Applicant and DCRA staff members regarding the applicable zoning and especially the zone standards applicable to the subject property that led to the issuance of permits for the project, excavation of the site and foundation work. The applicant has proceeded in good faith, albeit mistakenly, and in reliance upon DCRA's approval, to complete a significant amount of construction.

12. If the requested variance is not granted, the Applicant will have to suspend current construction activity on site, redesign the building, and reapply for and await a new building permit for the project before it can remobilize and recommence construction. The delays, the redesign effort and difficulties in remobilizing after an extended delay would impose very substantial additional costs for the project. As a result, a redesign of the project at this time to incorporate a rear yard would impose a substantial hardship on the Applicant. In addition, the delays would impose a hardship on neighboring residents who would have to deal with protracted construction activity on the site and the inconveniences associated therewith.

13. JBG representatives and their architect stated that the granting of the variance will not harm the public good nor impair the intent, purpose and integrity of the zone plan. The project as designed, with the courtyard in lieu of a rear yard, provides more light and air to neighboring residential buildings, the residents of which will face a more open and low-scale interior of the site compared to a more standard building with a rear yard. The courtyard provides approximately the same area of open space as would the rear yard; but, volume-wise, the amount and quality of open space are greater with the courtyard, and the courtyard provides better design results for the building and its neighbors.

14. The Applicant's architect showed illustrations indicating the less desirable effects on neighbors of a rear yard, either along the west or the south property line. The design and massing plan places low building elements at the interior edges of the site compared to a required rear yard plan and achieves a superior design with an L-shaped building along the frontages of 13th and N Streets, N.W. There is an alley of 15 to 30 feet in width along the southern property line, which serves as the functional equivalent of a rear yard. Also, the Crescent Towers Condominium to the west includes an open

area for its garage driveway adjacent to the subject property. Accordingly, there is no adverse effect due to lack of a rear yard, and in fact, more open space and a better design is achieved than would likely result from a building providing a required rear yard.

15. The Applicant's team also reviewed the rationale for the area rezoning undertaken in Zoning Commission Case No. 97-7. The public policy thrust of that case derived from the *Comprehensive Plan for the National Capital*, which established residential uses and development as the preferred uses in this neighborhood, rather than a mixture of residential and office uses as permitted in the prior SP-2 zoning. The Applicant noted that the proposed apartment building is therefore carrying out recent land use policy of the District of Columbia.

16. The Office of Planning, by report dated April 22, 2002 and by testimony at the public hearing, recommended approval of the variance. The OP report presented extensive background and analysis of the importance of residential development on the edge of Downtown Washington, and concurred that the variance request was justified and would not adversely affect the public good or the integrity of the Zone Plan.

17. The condominium association of the Crescent Towers and the owner of the Sutton Plaza apartments both submitted letters in support of granting the requested variance, as did the owner of the apartment house directly across N Street from the site. Advisory Neighborhood Commission 2F and the Logan Circle Community Association also submitted letters in support. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested variance is an area variance, the granting of which requires the showing of some exceptional condition or situation affecting the property that creates a practical difficulty for the owner. The Board concludes that the unusual configuration of development on adjacent lots together with adjacent public and private alleys adjacent to the interior property lines of the subject property constitute unique and unusual conditions which create practical difficulties in providing a standard rear yard.

The granting of the requested variance is consistent with the purposes of the R-5-E zone district and will not cause any public harm. The Office of Planning and the Advisory Neighborhood Commission 2F supported the application. The Board notes that several community organizations, as well as the owners of the abutting apartment buildings who would be most affected by the lack of a rear yard, all submitted testimony in support of granting the variance. The Board concludes 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 Maps. It is therefore **ORDERED** that the application is **GRANTED.**

VOTE: **5-0-0** (Geoffrey H. Griffis, Carol J. Mitten, Anne M. Renshaw, Curtis L. Etherly, Jr., and David W. Levy to Approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

Final Date of Order: MAY 22 2002

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.

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.
MS/rsn

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As Director of the Office of Zoning, I hereby certify and attest that on MAY 22 2002 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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ATTESTED BY: Jerrily R. Kress

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