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July 2, 2002

CHRISTINE MOSELEY SHIKER
202-457-7167

Internet Address: cmshiker@hklaw.com

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VIA HAND DELIVERY
Members of the Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: BZA Case No. 16897
JBG/JER 6th Street, L.L.C.
Prehearing Submission

Dear Board Members:

On behalf of JBG/JER 6th Street, L.L.C., enclosed please find an original and twenty copies of its prehearing submission in support of the above-referenced application for special exception and variance relief.

Should you have any questions regarding this matter, please do not hesitate to contact me at (202) 457-7167.

Sincerely,

Christine Moseley Shiker

Christine Moseley Shiker

cc: Maxine Brown Roberts, Office of Planning

BZA
Case No. 16897
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.16897
EXHIBIT NO.26

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
JBG/JER 6TH STREET, L.L.C.
6th STREET, BETWEEN G & H ST, N.W.

BZA APPLICATION NO. 16897
HEARING DATE: JULY 16, 2002
ANC 6A

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STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of JBG/JER 6th Street, L.L.C. (the "Applicant") in support of the application to the Board of Zoning Adjustment for the following variance and special exception relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§ 3103.2 and 3104.1: (i) variances from the lot occupancy and rear yard requirements of Sections 772.1 and 774.1; (ii) variances from the residential recreation space requirements of Section 1706.4(f), 773.7, and 773.8; (iii) variance from the parking drive aisle width requirement for a limited portion of an access way and the loading berth requirement of Sections 2117.5 and 2201.1; and (iv) a special exception from the roof structure requirement of Section 411.5. The relief is requested in order to permit the construction of a fifty-five unit condominium apartment house located on 6th Street, N.W., between G and H Streets, N.W. (the "Site"), located in the DD/C-2-C District.

The application originally included a request for variance relief from the Chinatown retail requirements set forth in Section 1705.3. However, this variance is no longer necessary as the Applicant will enter into a combined lot development

agreement with the adjacent site to the north to satisfy this requirement, and, thus, the Applicant withdraws that request for variance relief. The Zoning Review Branch has agreed that this agreement will satisfy the Chinatown retail requirements.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103 and 3104 of the District of Columbia Municipal Regulations ("Zoning Regulations"). 11 DCMR §§ 3103 and 3104.

III.
BACKGROUND

A. Description of the Site

The Site is located on 6th Street, N.W., between G and H Streets, N.W., and consists of Lots 8, 801, 802, and 803 in Square 486. Square 486 is bounded by H Street to the north, 5th Street to the east, G Street to the south, and 6th Street to the west. The Site is currently improved with a surface parking lot. The Site is located in the DD/C-2-C District and specifically within the Chinatown area.

B. Description of Surrounding Area

The area in which the Site is located is on the northeastern edge of Downtown, near the MCI Center in Chinatown, and includes many parking lots and underdeveloped parcels. This area is in a phase of transition and revitalization to create a living downtown as envisioned in the planning goals for this areas. As stated, the Site is located on the east side of 6th Street, between G and H Streets.

Major development in the immediate area include the MCI Center across 6th Street to the southwest and Gallery Place, approximately one and one-half block from the Site.

Square 486 includes two additional apartment houses which have been approved and are under construction by Avalon Bay. Square 486 also includes the following: the Red Roof Inn; the four story Myrene apartment house; the Rock, a three story sports bar; a two-story printer; and the Arena Café. Square 454, across 6th Street to the west, is the site of the Gallery Place development and also includes several small retail sites, such as a magazine and video store and a liquor store. A multistory warehouse structure including a parking facility is located directly across from the Site. Square 487 to the south of the Site is improved with the eight-story Metro headquarters building.

C. Project Description

The Applicant proposes to construct an apartment house with approximately fifty-five units (the "Project"). The units within the Project will be for sale to help establish the critical residential core necessary to achieve the planning goals for this area. The Project includes a one-level, below grade parking garage and provides fourteen parking spaces in accordance with the Zoning Regulations. 11 DCMR §2101.1.

IV.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCES

A. Standards for Granting Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

(1) the property is unique because, *inter alia*, of its size, shape or topography or other extraordinary or exceptional situation or condition;

(2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and

(3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, the Project and the variances requested for the same meet all three prongs of this test.

B. Overview of the Site's Exceptional Condition

The Site has several unique conditions which give rise to an exceptional situation. First, the Site is extremely small. The Site has a lot area of only 6,375 square feet, with seventy-five feet of frontage on 6th Street and a depth of eighty-five feet. Although the Site is relatively flat, its square shape in combination with its small size creates significant difficulties in designing and developing an apartment

house within the confines of the Zoning Regulations. Specifically, the necessary support areas for an apartment house require a certain density to create an economically viable project, which results in the variances requested herein.

Furthermore, the Site is designated in Housing Priority Area B, and therefore, Section 1706.4(b) of the Zoning Regulations requires a residential component of 4.5 FAR. In order to construct that amount of residential FAR on the Site, the Project must be at least five stories, creating certain economic difficulties for the Site. These issues are discussed in detail below.

Additionally, the Site is located in the easternmost section of the Downtown Development District, which is an area where residential development is strongly encouraged. Although residential development in this area has begun, it has not yet been fully realized. If the goal of a living downtown is to be accomplished by private, unsubsidized development, a critical mass of housing is needed to give private interests the incentive to invest in such an endeavor. Moreover, this critical mass of housing must exist for the private markets to respond to opportunities for development. It is therefore necessary to provide an appropriate number of residential units at this Site to achieve an economically viable project and to achieve the critical mass of housing necessary to strengthen and grow the area.

B. Variance Relief from Lot Occupancy and Rear Yard Requirements

1. Basis for Variances

The small size and square shape of the Site create practical difficulties in designing and developing an apartment house. Although the Applicant's initial plan was to create a significantly larger rectangular site, which is much more

conducive to the required components of an apartment house, the Applicant was unable to purchase the adjacent property to the south (Lot 5). Thus, the apartment house has been designed to work within the constraints of the small, square Site and includes the standard two components of an apartment house: individual dwelling units and required support areas. These support areas include the elevator core, stairwells, corridors, trash chutes, and mechanical rooms. The size of these support areas remains basically the same; for instance, a project with 150 dwelling units would have the same size support areas, including only two elevators, but would be able to spread the costs over a significantly larger number of units. In a smaller building, the percentage of each floor dedicated to these spaces is increased, making it more difficult to create a economically viable building. For example, looking only at space devoted to the stairs and elevators, each unit in this Project must account for the costs of 107 square feet of the stair and elevator space while each unit in an 150 unit project accounts for the cost of only forty-one square feet of the stair and elevator space.

In this Project, only five apartments result on each floor due to the required placement of the support areas. If the building includes the fifteen foot rear yard setback, the three apartments at the rear of the building would be cut in half. Required sizes and clearances for each apartment unit (as required, for example, by the Fair Housing Act and market demands) could not be met, and the resulting loss to the Project would be between twenty and forty percent of the proposed number of units. Similarly, conforming to the eighty percent lot occupancy requirement leads to the same result.

Furthermore, as discussed above, the Downtown Development District designation requires that the Site provide no less than 4.5 FAR devoted to residential uses. In order to provide that required level of residential use, the apartment house must be at least five stories in height with 100 percent lot occupancy. With eighty percent lot occupancy, the Project must be at least six stories in height. Due to these height requirements, the District of Columbia Building Code requires heavy frame construction with a central core, which significantly increases construction costs.

Therefore, in order to create an economically viable building, the Project must include a certain critical mass of units. For this Project, the critical mass has been identified at fifty-five units, which represents five units per floor. This Project is still economically difficult at this level due to the costs being spread over a smaller number of units. However, if this Project complied with the lot occupancy and rear yard requirements, the number of units would drop twenty to forty percent. With that result, this Project will no longer be economically viable.

2. A Strict Application of the Zoning Regulations Would Impose a Peculiar and Exceptional Practical Difficulty on the Applicant

A strict application of the Zoning Regulations would impose a peculiar and exceptional practical difficulty. As discussed above, the small, square shape of the Site prevents the construction of a viable apartment house in accordance with the Zoning Regulations. Furthermore, this specific area of the Downtown Development District, included in Housing Priority Area B (11 DCMR 1706.8(b)), is particularly in need of a critical mass of housing. The Site, as well as areas in surrounding

squares, have remained vacant despite housing incentives created by the establishment of the Downtown Development District. Significant residential development in this area is only now beginning. A strict application of the Zoning Regulations will reduce the possibility of creating a critical mass of housing because projects like this one are not viable without certain density. Therefore, the threatened viability of residential projects in this part of Downtown and the small size and square shape of the Site create exceptional practical difficulties for the Applicant, requiring greater density that the lot occupancy and rear yard variances provide.

3. Relief Can Be Granted Without Substantial Detriment to the Public and Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan as Embodied in the Zoning Regulations and Map

The lot occupancy and rear yard variances can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The intent of lot occupancy and rear yard requirements are to provide sufficient light and air to residential units. The location of the Site guarantees that the residential units will have sufficient light and air. The Site is located adjacent to an existing three story structure currently used as the Rock, a popular sports bar and grill (the "Rock"). The Applicant owns this property and intends to maintain the Rock as a low rise retail use. Adjacent to the Rock is G Place, a thirty foot, east-west public alley. The Site also abuts a fifteen foot, north-south alley in the rear. On the opposite side of the alley, Avalon Bay is constructing an apartment house with approximately two

hundred units, which includes a fifteen foot rear yard. Therefore, there is an appropriate amount of space between the Project and Avalon Bay's residential project. Similarly, on the south side of the Project is a two story structure owned by a printing company. The Applicant's attempts to purchase this property have been unsuccessful, as stated above. Adjacent to the printing company is a vacant site also owned by the Applicant. The four story Myrene apartment building, which is located adjacent to that site, has been designated as an individual historic building and, thus, will be maintained. The low-rise Arena Café completes the block.

The Project incorporates sufficient light and air and will not adversely impact the light and air of adjacent properties. Furthermore, the addition of these apartment units to the area will have a significant positive effect and help produce the critical mass of housing desired in the Downtown area, as envisioned in the Comprehensive Plan.

C. Variance from the Residential Recreational Space Requirements

The Applicant requests three variances related to the residential recreation space requirements. First, Section 1706.4(f) of the Zoning Regulations requires that residential development in the DD/C-2-C District provide not less than five percent of the gross floor area of the building for residential recreation space. Based on the 76,872 square feet of residential gross floor area proposed, the Project must include 3,844 square feet of residential recreation space (or 5%). The Project proposes a total of 1,451 square feet (or 1.9%) devoted to residential recreation space. Because the residential recreation space requirement of five percent cannot be met on the

Site, the Applicant requests a variance from the residential recreation space requirement of Section 1706.4(b).

Second, Section 773.7 of the Zoning Regulations requires that for outdoor residential recreation space, there be no dimension less than twenty-five feet for the roof area. The proposed roof deck is twenty feet by twenty-six feet, and therefore, a the Applicant requests a variance from this requirement.

Third, Section 773.8 of the Zoning Regulations requires that no less than fifty percent of residential recreation space be located outdoors. Due to the small size of the Site and the physical constraints of the roof, only thirty percent of the recreation space is located outdoors, and accordingly, the Application requests a variance from this provision.

1. The Site is Affected by an Exceptional Situation or Condition

The Site is affected by exceptional conditions due to the small size of the Site. This small size limits the amount of space available on the roof and within the apartment house to devote to residential recreation space. Furthermore, the small size of the Site prevents the inclusion of any residential recreation space at the ground level.

2. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

Due to the Site's small size and the resulting configuration of the residential units, it is practically difficult to include any additional residential recreation space. The Applicant proposes to devote 1,451 square feet of gross floor area and exterior open space to residential recreation space. The residential recreation space is

provided in several ways: a roof deck (approximately 520 square feet); a fitness center and restrooms (approximately 540 square feet); and a community center to be used as a shared living space for the Project's residents for such events as parties, homeowner association meetings or community events (approximately 390 square feet).

The Applicant is unable to provide additional residential recreation space. First, no additional outdoor space is available due to the small size of the Site. In order to construct a viable apartment house, the Project must incorporate 100% lot occupancy and thus no outdoor space, such as a courtyard, can be incorporated.

The interior square footage is also limited based on the extremely small size of the Site. Currently, the ground-level floor houses the community center, fitness center, and accompanying bathrooms as well as the main lobby and mail room, which have not been included in the computation of residential recreation space. The remaining space on the ground floor level is occupied by the loading and trash facilities, the elevator core and stairways, and the required mechanical and elevator rooms. There is no residual space in which to include additional residential recreation space. Likewise, the below-grade level is devoted to parking and is not available for residential recreation space. There is also no available above-grade space to be devoted to residential recreation space. The conversion of any additional space to residential recreation space reduces the number of dwelling units in the Project and the Downtown core, thereby compromising both the economic viability of the Project and the housing objectives of the Downtown Development District.

The roof deck cannot be enlarged due to the physical constraints of the roof, such as its small size and the location of the elevator core. Furthermore, the size of the roof deck is limited by the load occupancy requirements set forth in Section 1008 of the District of Columbia Building Code and the provision of only one means of ingress and egress as set forth in Section 1010 of the District of Columbia Building Code. In this Project, no additional means of ingress and egress can be provided to the roof for two reasons. First, the stairwell enclosure would sit at the edge of the roof and, due to its placement in the core, could not be setback from the exterior wall a distance equal to its height, as required by Section 770.6(b) of the Zoning Regulations. Second, the stairwell would constitute a second enclosure in violation of Section 411.3 of the Zoning Regulations. Therefore, the size of the roof deck cannot be expanded within the requirements of the Zoning Regulations and Building Code.

Additionally, the roof deck cannot be widened. The penthouse abuts the east side of the roof deck and the Project's exterior wall abuts the west side of the roof deck. Therefore, the roof deck cannot be expanded to a width greater than the twenty feet proposed. Accordingly, the strict application of Sections 1706.4(b), 773.7 and 773.8 would result in a peculiar and exceptional practical difficulty for the Applicant.

3. Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan as embodied in the Zoning Regulations and Map

Variance relief from the residential recreation space requirements of Sections 1706.4(b), 773.7, and 773.8 can be granted without substantial detriment either to

the public good or the Zoning Regulations. As proposed, the Project provides an appropriate amount of residential recreation space through a variety of very practical and distinct forms, as described above, and provides ample recreation opportunities for residents of this type of building.

In addition to the recreation space provided on site, the Site is located in the Downtown core, with the MCI Center and Gallery Place within less than two blocks of the Site. The goal of the Downtown Development District is the creation of a lively downtown with active pedestrian use. When Downtown's many recreational and entertainment activities available are considered along with the Site's provided recreation space, the recreation space available to residents will be more than sufficient.

Furthermore, there is no harm associated with the reduced dimensions of the roof deck or the reduced amount of outdoors residential recreation space. The roof deck provides an appropriate amount of space to be enjoyed by the residents. Similarly, the area surrounding the Site includes several Federal reservations in the area which can be used for additional outdoor recreation space. Moreover, residents who choose to live in urban locations do so, in part, because of the abundant urban opportunities in the area. Accordingly, the requested relief will not have an adverse impact on the public or the zone plan.

D. <u>Variance from Parking Drive Aisle</u>

Section 2117.5 of the Zoning Regulations requires that parking aisles in the parking garage have a clear width of not less than twenty feet. The Project has a "pinch-point" in its parking garage for approximately nineteen feet at which point

the drive aisle is reduced to approximately fifteen feet. Accordingly, the Applicant requests a variance from Section 2117.5.

The Site's small size results in the reduction of the drive aisle width for this small portion of the garage. Specifically, the Zoning Regulations require fourteen parking spaces for the Project (one space per four dwelling units). Two parking spaces are provided at the rear of the building near the loading dock. The remaining twelve spaces are located in the below-grade parking garage. In order to include twelve spaces, one parallel parking space has been included along the southern wall of the garage. The resulting decrease in the drive aisle width occurs for the length of the parallel parking space.

The drive aisle width cannot be increased in this parking garage. The core of the building is approximately twenty-four feet in width, which results in approximately twenty-three feet remaining on each side. Thus, in the event that the core could be relocated to accommodate the parking garage, which is not a viable option due to the required layout of the apartment house, the drive aisle on the northern portion of the garage would be reduced below the required width. Furthermore, to expand the garage to a second below-grade level would be prohibitively costly and virtually inoperable. The ramps would not be functional, and the level of service achieved in the garage would be unacceptable.

Relief can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. As stated above, the reduced-width drive aisle extends for only nineteen feet. The drive aisle accesses only three spaces

at the end of the garage. Those cars that must access these spaces will have adequate maneuverability for both ingress and egress to the spaces. Therefore, the requested relief will not have an adverse impact on the public or the zone plan.

F. Variance from the Loading Berth Requirements

Section 2201 of the Zoning Regulations requires that an apartment house with more than fifty dwelling units provide one fifty-five foot loading berth, one loading platform at two hundred square feet, and one twenty foot deep service/delivery space. The Project includes the service/delivery space and the loading platform; however, due to the small size of the Site, the Project cannot include the required loading berth. Accordingly, the Applicant requests a variance from Section 2201.

As described above, the Site's small size gives rise to an exceptional condition. The Site is eighty-five feet deep. If the loading berth was provided along with the required loading platform, the building would virtually be split into two separate buildings due to the fact that the Site is only eighty-five feet deep. Therefore, it is practically difficulty to incorporate the loading berth.

However, relief can be granted without substantial detriment to the public and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The service/delivery space should adequately satisfy all of the loading needs for the Project. Due to the size of the Project, there will be a relatively low population of residents. Furthermore, as a condominium building, the Project will have a lower percentage of turn over, and accordingly, less use of the service/delivery space. Moreover, use of the

service/delivery space will be coordinated by the building management and thus, will eliminate any conflicting delivery times. Thus, the requested relief will not have an adverse impact on the public or the zone plan.

V.
THE APPLICANT MEETS THE TEST FOR SPECIAL EXCEPTION RELIEF TO ALLOW ADJUSTMENTS TO THE ROOF STRUCTURE REQUIREMENTS UNDER 11 DCMR § 411.

A. Standard for Approving Special Exception Relief

Due to the exceptionally small size of the Site, the proposed apartment house cannot comply with the roof structure requirement that the walls be of equal height set forth in Section 411.5. Accordingly, the Applicant requests special exception relief to deviate from the strict compliance of Section 411.5 of the Zoning Regulations as permitted under Sections 411.11 and 3104.1 of the Zoning Regulations.

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (*quoting Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

B. Standard of Review for Roof Structure Special Exceptions

Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure requirement where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

C. Relief from Section 411.5 to Deviate from Roof Structure Setback Requirement

The Applicant requests relief from Section 411.5 of the Zoning Regulations. That section requires the enclosing walls of a penthouse to be of equal height. The roof plans illustrates that the Project incorporates two sets of enclosing walls. The first set of walls are six feet in height and screen mechanical equipment which sits outside the penthouse enclosures. These walls are set back six feet from the exterior wall in accordance with Section 770.6(b). The second set of walls are approximately seventeen and one-half feet tall and enclose the mechanical equipment within. These walls are setback a distance greater than seventeen and one-half feet from the exterior wall in accordance with Section 770.6(b).

The small size of the Site dictates this outcome. The width of the building is only seventy-five feet. The penthouse enclosure is thirty-nine feet, which results in approximately eighteen feet remaining on each side. The height of the penthouse,

therefore, must be less than eighteen feet. However, the remaining outdoor mechanical equipment must be screened by a wall that is also setback a distance at least equal to its height. Because the penthouse cannot be lowered any further, the screening walls become of unequal height in order to accommodate the setback requirements.

Furthermore, the penthouse is placed in the middle of the building. This core cannot be adjusted due to the configuration of the apartment building; however, even if adjustment could be made, any adjustment would result in setbacks not being met on at least one side.

The proposed elevator penthouse does comply, however, with the spirit and intent of the roof structure provisions and the Zoning Regulations by ensuring adequate light and air to adjacent property and abutting streets. The step in heights creates an aesthetically pleasing tiered wedding cake effect and has been designed to complement the massing and architectural quality of the residential building. Due to the height and location of the Project, it would be unlikely that the stepped effect could be seen from anywhere by the highest vantage points. Accordingly, the proposed penthouse is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Section 411.5.

VII.
COMMUNITY SUPPORT

The Applicant has been working with the Advisory Neighborhood Commission 6A ("ANC 6A") since it filed the application in May, 2002. The

Applicant presented the case to the ANC 6A Zoning and Licensing Subcommittee (the "ANC Subcommittee") at its May 16, 2002, and June 12, 2002, meetings. At the June meeting, the ANC Subcommittee voted to support the application with conditions. At this meeting, Rob Hall, the Single Member District Representative for the Site, spoke in favor of and voted to support the Project. The full ANC will vote on the Project at its July 11, 2002, meeting.

In addition, several letters have been filed in support of the Project. Specifically, Washington Sports & Entertainment L.P., owner of the MCI Center supports the Project, as does The John Akridge Companies, owner and co-developer of Gallery Place. Furthermore, letters of support have also been received from Myrene LLC, owner of the four story apartment house at 703 6th Street, and the Downtown Housing Now Committee. Finally, the Applicant continues to work with Avalon Bay, the adjacent property owner, in order to resolve any outstanding issues regarding the proposed development.

VII.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A:	Portions of the Sanborn Atlas and Baist Map showing the Site highlighted in yellow;
Exhibit B:	A portion of the Zoning Map showing the Site highlighted in yellow;
Exhibit C:	Surveyor's Plat of the Subject Property;
Exhibit D:	Letter from the Zoning Review Branch confirming analysis regarding Combined Lot Development Agreement
Exhibit E:	Outline of Testimony of Representative of JBG/JER 6th Street, L.L.C;

Exhibit F: Outline of Testimony of RTKL Architects, project architect;

Exhibit G: Outline of Testimony of Steven E. Sher, Land Planner; and

Exhibit H: Outline of Testimony of Expert in Land Economics.

VIII.
WITNESSES

A. Representative of JBG/JER 6th Street, L.L.C.

B. RTKL Architects, project architects.

C. Steven E. Sher, Land Planner.

D. Lynn Bogerad, Expert in Land Economics.

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for area variances and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

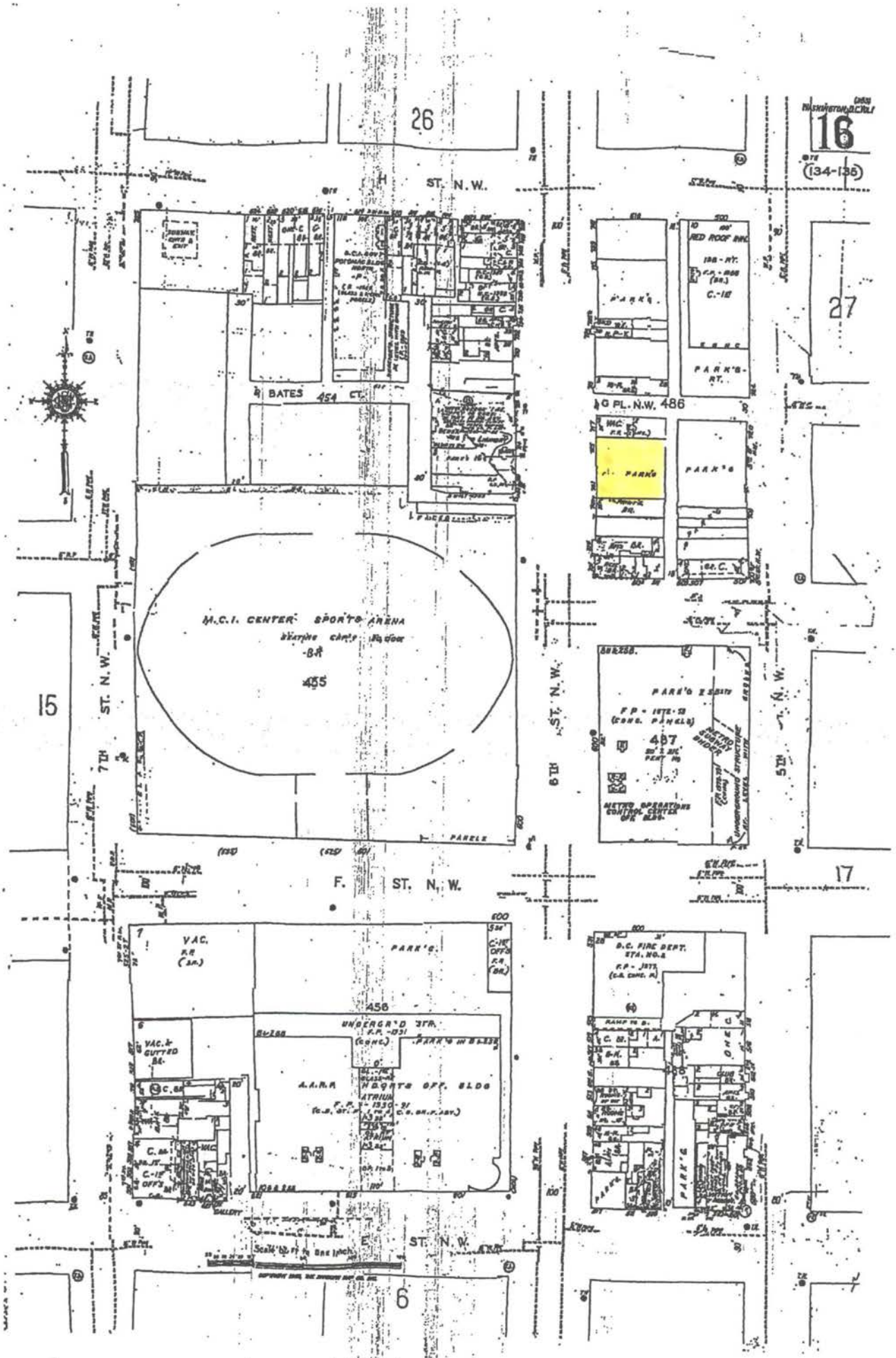
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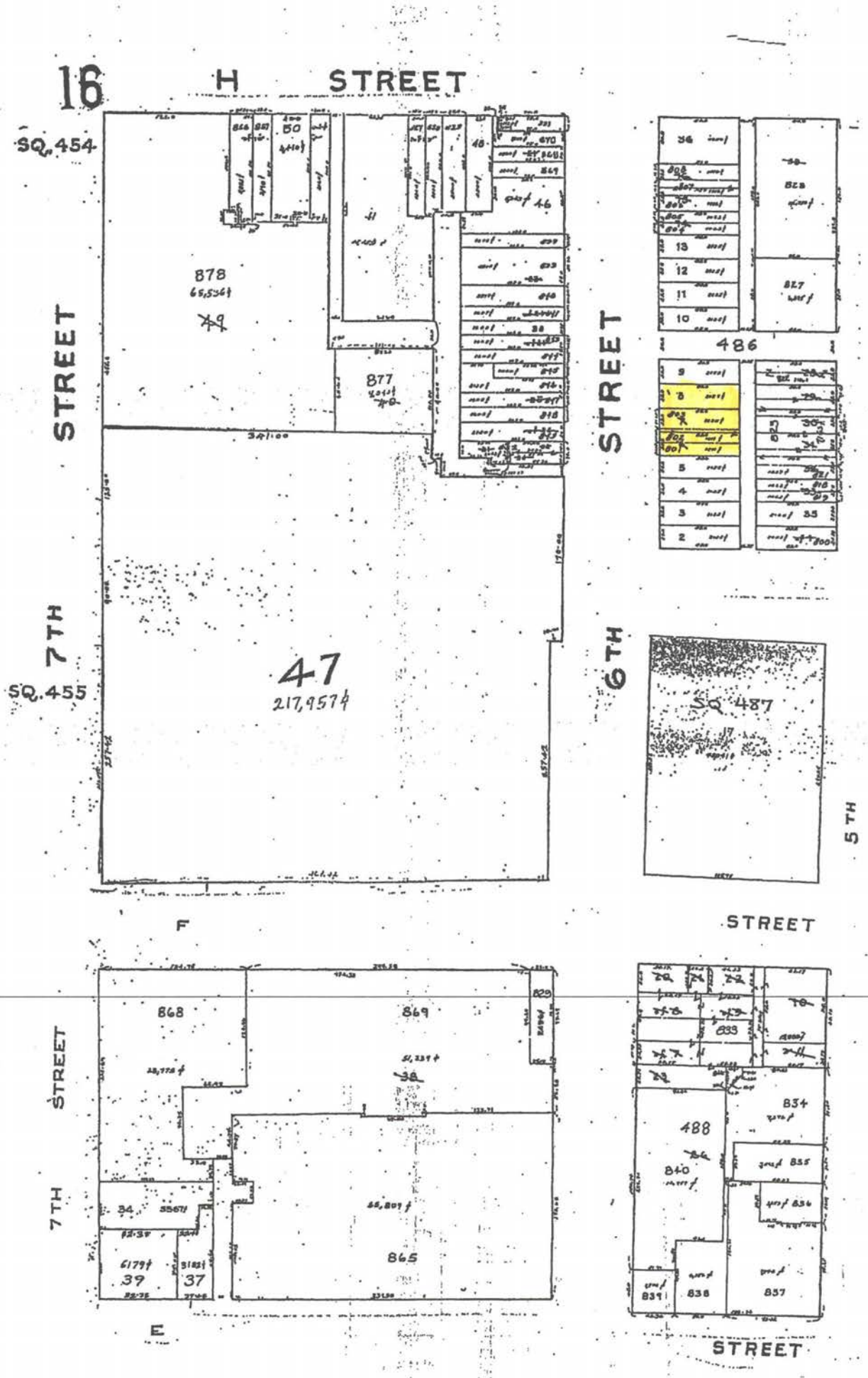
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Christine Moseley Shiker, Esq.

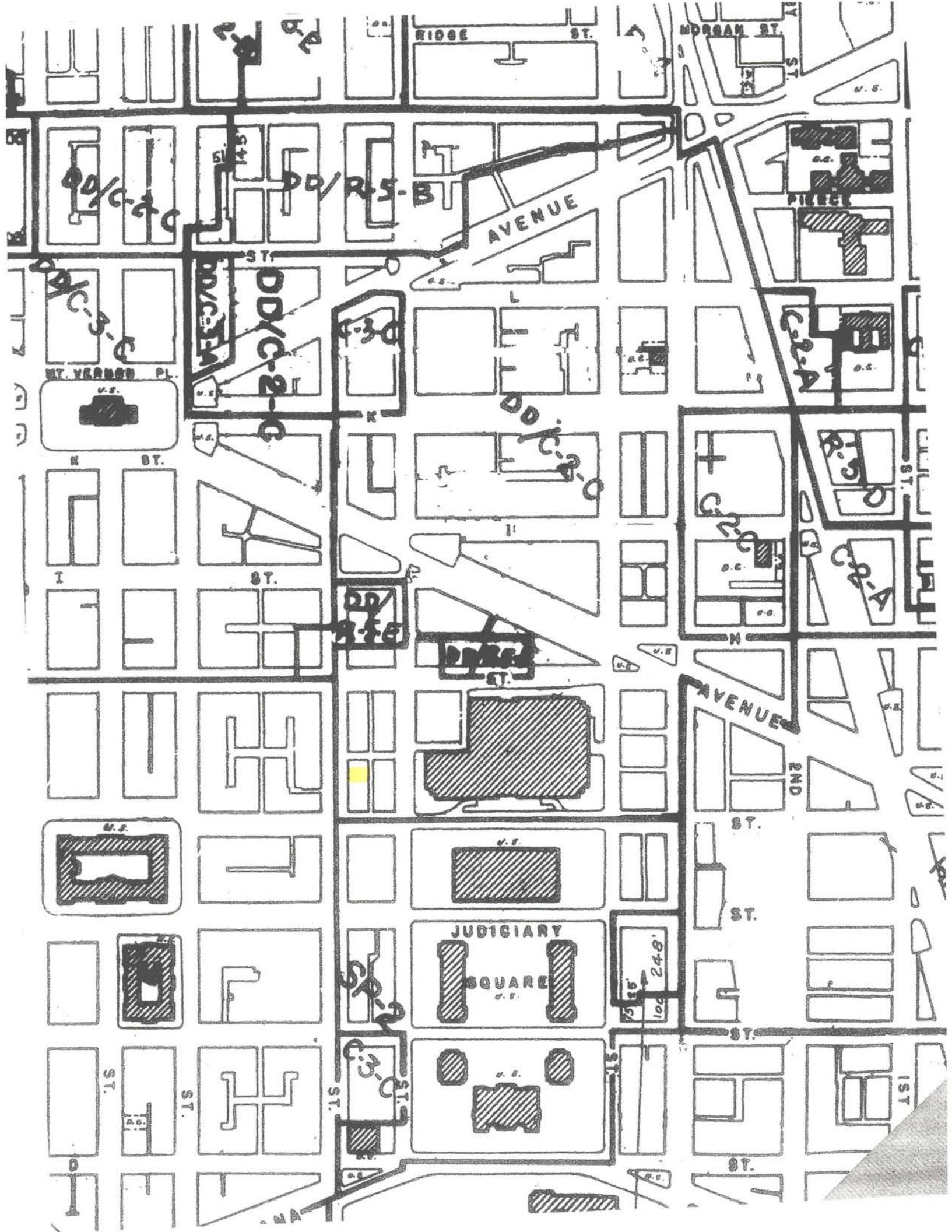
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DD/C-3-C
DD/R-5-E
DD/C-3-A
C-3-A
U.S.
D.C.



D RICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., April 10, 2002

Plat for Building Permit of SQUARE 486 LOTS 801, 802, 803 & 8

Scale: 1 inch = 20 feet Recorded In A & T Book - Microfilm (LOTS 801, 802, 803) and Book REC 2 Page 486 (LOT 8)

Receipt No. 008031

Furnished to: HOLLAND & KNIGHT

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

for Surveyor, D.C.

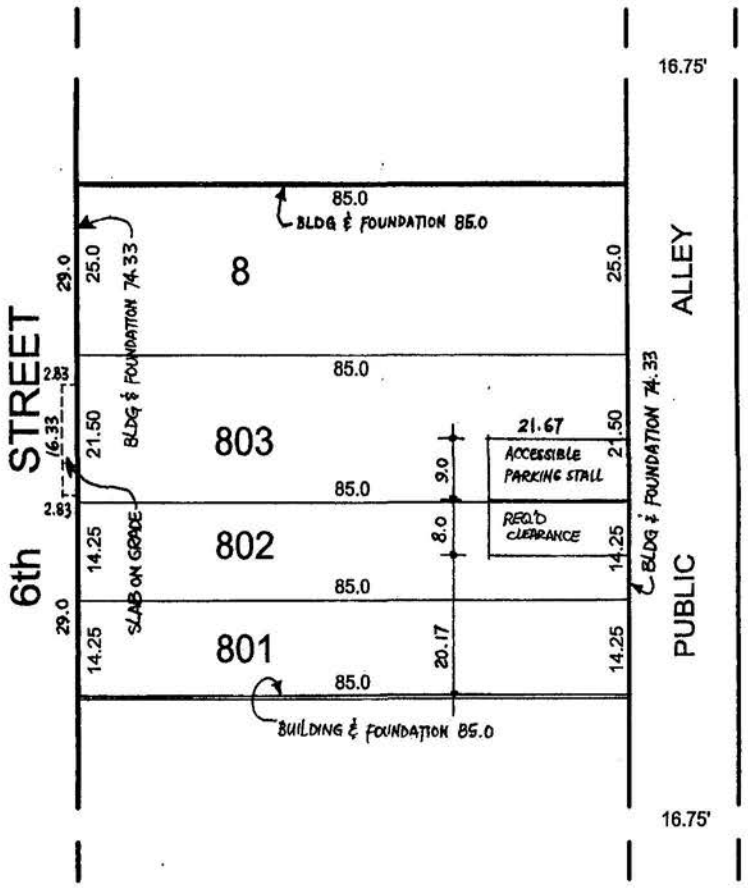
By: L.E.S.

FS

Date: 5/8/02

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.





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May 24, 2002

VIA HAND DELIVERY

CHRISTINE MOSELEY SHIKER
202-457-7167
Internet Address:
cmshiker@hklaw.com

Mr. Olutoye Bello
Chief of Zoning Review Branch
Building and Land Regulation Administration
2nd Floor, 941 North Capitol Street, N.E.
Washington D.C. 20002

Re: Square 486, Lots 8, 801, 802, and 803 and Lot 9
Combined Lot Development Agreement

Dear Mr. Bello:

This is to confirm our discussion on May 24, 2002, wherein we reviewed the use of a Combined Lot Development Agreement to satisfy the Chinatown retail requirement set forth in Section 1705.3 of the Zoning Regulations. The property is located on 6th Street between G and H Streets, N.W., in Square 486 (the "Site"). Our client intends to develop the Site with an apartment house which will include approximately 55 dwelling units. Due to the physical constraints of the Site, no retail can be included on-site within the development.

We are currently processing a Board of Zoning Adjustment case to seek variance and special exception relief for various aspects of this development. At this time, the application includes a variance from the Chinatown retail requirements set forth in Section 1705.3 of the Zoning Regulations. However, this variance is not necessary if the developer enters into a Combined Lot Development Agreement to satisfy this requirement on another property.

The property adjacent to the Site to the north (Lot 9) is improved with a three story building containing approximately 6,375 square feet of gross floor area devoted to retail use (hereinafter referred to as the ("Receiving Lot"). The Zoning Regulations permit two or more lots to be combined for the purpose of achieving the required FAR equivalent for preferred uses provided that certain requirements set forth in Section 1708.1(a) through 1708.1(i) are met. As described below, each requirement of Section 1708.1 is met, as follows:

a. The Site and the Receiving Lot are both located in Square 486.

b. A combined lot development is eligible for the density and area allowances permitted in Section 1705.

c. Because the combined lot development involves linkage, the Site and the Receiving Lot must be located within the same subarea. In this case, the Site and Receiving Lot are both located within the Chinatown subarea.

d. Neither the Site nor the Receiving Lot is a historic property as identified and governed by Section 1707.4.

e. In a linkage project, the required floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot. Ground level uses may not be transferred; however, the Chinatown retail requirement does not require ground level uses and therefore, may be transferred.

f. The certificate of occupancy for the sending lot may be revoked if no building permit for the receiving lot is issued to the developer within three years or no certificate of occupancy for the receiving lot has been issued within five years.

g. No transfer of bonus density is involved in this development.

h. The maximum permitted floor area for all uses and the minimum required floor area for preferred uses have been calculated as if the combined lots were one lot and the total project conforms with the maximum and minimum floor area requirements as follows:

Total Site Area:	8,500 square feet
Total Retail FAR Required:	4,250 square feet
Total Retail Provided:	6,375 square feet
Total Residential FAR Permitted:	No Maximum
Total Residential Provided:	76,872 square feet

i. The Site will be constructed after January 18, 1991. Although the Receiving Lot was constructed prior to 1991, it is the Site (i.e., the Sending Lot) which is utilizing the combined lot development provision to satisfy its retail requirement. The Receiving Lot is not utilizing the combined lot development provisions, receiving bonus density, or Transferable Development Rights. In the

absence of this combined lot development, there is no requirement that a retail use remain on the Receiving Lot.

We would appreciate your signing below to confirm that a combined lot development agreement between the Site and the Sending Lot may be used to satisfy the Chinatown retail requirement for the Site.

Thank you for your help in this matter. Should you need additional information or have any questions, please do not hesitate to call us.

Sincerely,

Christy Shiker

Christine Moseley Shiker

Confirmed that a combined lot development agreement between Lots 8, 801, 802, and 803 and Lot 9 may be used to satisfy the Chinatown retail requirement set forth in Section 1705.3 of the Zoning Regulations for the development of Lots 8, 801,802, and 803:

Olutoye Bello

6/3/02

Date



OUTLINE OF TESTIMONY
JBG/JER 6th STREET, LLC

I. Introduction

A. Description of JBG/JER 6th Street, LLC

B. History and Experience of JBG in Development of Washington

II. Background and Description of Project

A. Downtown Residential Development

B. Proposed Project and Constraints of Development

III. Special Exception and Variance Relief

A. Brief Description of Relief Requested

1. Variance Relief

a. Lot Occupancy and Rear Yard
b. Recreational Space Requirements
c. Parking Drive Aisle
d. Loading Berth

2. Special Exception Relief

a. Roof Structure - Walls of Equal Height

B. Architect to Provide Detailed Description

IV. Meetings with Community and Government Officials

A. Advisory Neighborhood Commission 6A

B. Consultation with the Office of Planning

C. Meetings and Discussions Adjacent Property Owners

V. Conclusion

F

OUTLINE OF TESTIMONY
RTKL ARCHITECTS, PROJECT ARCHITECT

I. Introduction

A. Description of RTKL Architects

B. History and Experience in Washington

II. Description of Project

A. General Description

1. Description of Area
2. Description of Site
3. Description of Building Design
4. Development of Surrounding Area
5. Number and Types of Units
6. Amount of Parking Spaces

B. Unusual and Exceptional Conditions Affecting Site

1. Small Size
2. Square Shape
3. Construction Issues Resulting from Minimum Required Residential FAR

III. Variance Relief Requested

A. Deviation from Lot Occupancy and Rear Yard Requirements

1. Exceptional Condition or Situation
2. Practical Difficulty
3. No Detriment to Public Good

B. Deviation from Residential Recreation Space Requirements

1. Exceptional Condition or Situation
2. Practical Difficulty
3. No Detriment to Public Good

C. Deviation from Parking Aisle Width Requirement

1. Exceptional Condition or Situation

2. Practical Difficulty
3. No Detriment to Public Good

D. Deviation from the Loading Requirement

1. Exceptional Condition or Situation
2. Practical Difficulty
3. No Detriment to Public Good

IV. Special Exception Relief Requested

A. Deviation from Roof Structure Requirement – Walls of Equal Height

B. Standard for Special Exception Relief Met

V. Conclusions



OUTLINE OF TESTIMONY OF
LYNN BOGERAD, ROBERT CHARLES LESSER & ASSOCIATES

I. Introduction

II. Experience and Expertise

III. Description of Site and Building Project

IV. Residential Development in Downtown Development District

V. Economic Issues

- A. By-Right Development
- B. Typical Residential Development
- C. Proposed Site
- D. Conclusions and Comparisons

VI. Conclusions

WAS1 #1099887 v1

H

OUTLINE OF TESTIMONY
STEVEN E. SHER, LAND PLANNER

I. Introduction

II. Site Location and Description

III. Description of Surrounding Area

IV. Zoning and Downtown Development District

V. Proposed Development

VI. Variance Relief Requested

- A. Proposed Variances
- B. Standard for Variance
- C. Compliance with Standard
  1. Exceptional or Extraordinary Situation or Condition
  2. Practical Difficulty
  3. No Detriment to Public Good

VII. Special Exception Relief

- A. Requirement for Walls of Equal Height
- B. Standard For Special Exception
- C. Compliance with Standard

VIII. Conclusions