Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

Atlanta
Boston
Bradenton
Chicago
Fort Lauderdale
Jacksonville
Lakeland
Los Angeles
Melbourne
Miami
New York
Northern Virginia
Orlando
Providence
St. Petersburg
San Antonio
San Francisco
Seattle
Tallahassee
Tampa
Washington, D.C.
West Palm Beach

International Offices:
Buenos Aires*
Mexico City
Rio de Janeiro
São Paulo
Tel Aviv*
Tokyo
*Representative Offices

Outline of Testimony
before the Board of Zoning Adjustment

BZA Application No. 16897
6th Street, N.W.

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP

July 16, 2002

I. Site location and description (see aerial photograph, Attachment 1)

A. Location

1. Southwest portion of the square bounded by 5th, 6th, G and H Streets, N.W.

2. Project site consists of lots 8, 801, 802 and 803 in Square 486

3. Site located in the Gallery Place/Chinatown/Mount Vernon Square area, across the street from the MCI Center

B. Size

1. Total site area is approximately 6,375 square feet

2. Rectangular site with frontage of seventy-five feet on 6th Street and a depth of eighty-five feet

C. Existing site condition: parking lot

BZA
Case No. 16897
Exhibit No. 42

II. Description of surrounding area

A. Gallery Place/Chinatown/Mount Vernon Square area

B. Area contains broad mix of uses and building types

Board of Zoning Adjustment
District of Columbia
CASE NO.16897
EXHIBIT NO.42

C. Significant new development now underway within two blocks:

1. New residential buildings under construction (all on substantially larger sites)

   a. Apartment house across the alley to the east (Avalon Bay)

   b. Apartment house at 450 Massachusetts Avenue (Paradigm)

2. New residential proposed

   a. 400 Massachusetts Avenue (Greystar Atlantic)

   b. 525 Massachusetts Avenue (Salvation Army property)

   c. 300 Massachusetts Avenue (Clark Realty)

   d. 6th Street (Avalon Bay Phase II)

3. New commercial buildings under construction

   a. Square 454 - Gallery Place

   b. Square 456 - Terrell Place

   c. Square 488 - National Academy of Sciences

4. MCI Center completed across the street

D. Remainder of Square 486

1. Parking lots and various two, three and four story buildings to the north and south along 6th Street

2. Red Roof Inn at 500 H Street (southwest corner of 5th and H Streets)

3. High-rise apartment building under construction at 770 5th Street

4. Four story historic commercial building at 501 G Street (Burger King)

E. Uses to the south:

1. WMATA headquarters building at 600 5th Street

2. National Building Museum at 441 F Street

F. Uses to the east:

1. General Accounting Office

2. St. Mary's Church

3. Commercial 90 foot building at 450 H Street

G. Uses to the west:

1. MCI Center

2. New Gallery Place development , including retail/office/ residential/ parking (under construction)

3. Various 1 to 5 story commercial buildings, forming the east-west core of Chinatown along H Street, part of the Downtown Historic District

H. Uses to the north:

1. 2 and 3 story buildings devoted to residential and miscellaneous commercial uses

2. Parking lots

3. Corinthian Baptist Church at the corner of 5th and I Streets

4. Judiciary House apartments at 461 H Street (90 foot high rise housing for the elderly)

5. Two story vacant former D.C. Fire House (historic landmark on the D.C. Inventory)

6. Former parking lot fronting on Massachusetts Avenue and 5th and I Streets, currently under construction for a high-rise apartment house

7. Two and three story buildings used for offices at the northwest corner of 5th and H Street

8. Wah Luck apartment house at the northwest corner of 6th and H Streets

III. Existing zoning: C-2-C

A. Uses (§§720 – 734)

1. Commercial use permitted as a matter-of-right, including retail, service and office use

2. Hotel

3. Residential use permitted as a carry-over from the Special Purpose and Residential Districts

B. Height - maximum of 90 feet (§770.1)

C. Density - maximum of 6.0 FAR, with nonresidential uses limited to 2.0 FAR (§771.2)

D. Lot occupancy – 80% permitted (§772.1)

E. Residential recreation space - minimum area equal to 15% of the gross floor area devoted to residential use (§773.3)

F. Rear yard – 15 feet (§774.11)

G. Side yard - not required (§775.5)

H. Parking for apartment house use: minimum of 1 space for each 4 units (§2101.1)

I. Downtown Development (DD) Overlay District (Chapter 17)

1. Applies to new buildings and alterations or additions to existing buildings involving more than 100 percent of assessed value of building in any twelve month period (§1700.5)

2. Height is maximum permitted under the Act of 1910 – 120 feet for subject site (§1701.7)

3. Housing Priority Area B (§1706.4)

a. No maximum FAR for residential uses

b. Minimum of 4.5 FAR <u>required</u> to be devoted to residential use (3.5 FAR available for commercial)

c. Residential recreation space requirement reduced to 5%

4. Chinatown: minimum of 0.5 FAR equivalent required to be devoted to retail, service, arts and entertainment uses (§1705.3)

IV. Proposed development

A. Use: apartment house of approximately forty-six units

B. Gross floor area of approximately 70,122 square feet (11.0 FAR)

C. Height: twelve stories, 120 feet

D. A total of 12 parking spaces on the ground and one cellar level

V. Relief required

A. Variances

1. Lot occupancy

a. Maximum permitted: 80%

b. Proposed: 100% (88% above the third floor)

c. Variance: 20%

2. Rear Yard

a. Minimum required: 15 feet

b. Proposed: 0 (ten feet above the third floor)

c. Variance: 15 feet

3. Residential recreation space

a. Total area

(1) Minimum required: 3,506 square feet

(2) Proposed: 1,451 square feet

(3) Variance: 2,055 square feet

b. Outdoor area

(1) Minimum required: 1,753 square feet

(2) Proposed: 520 square feet

(3) Variance: 1,233 square feet

c. Roof dimensions

(1) Minimum required: 25 feet

(2) Proposed: 20 feet in the east-west direction

(3) Variance: 5 feet

B. Special exception for walls of unequal height

VI. Standards for a variance (§3103.2)

A. 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,

B. the strict application of any regulation adopted under D.C. Code §§5-413 to 4-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship;

C. Provided, 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.

VII. Compliance with the variance standards

A. Exceptional or extraordinary situation or condition

1. Small size of site, especially as compared to other residential sites under development (see Attachment 2)

2. Adjoining property to the north is potentially historic and the adjoining property to the south is in an adverse ownership and cannot be acquired

3. Requirements of the DD District to provide a minimum of 4.5 FAR of housing

a. At maximum lot occupancy of eighty percent, would require a building with a minimum of six stories

b. Would also require a minimum of 1,434 square feet of recreation space

c. Requires an elevator and other expensive core factors

4. Roof dimensions are such that cannot provide elevator core (with override) and roof deck for outdoor recreation that meets twenty-five foot dimension

B. Practical difficulty

1. Without variances, could only develop three units per floor or four very small units per floor

2. Would be insufficient number of units to spread the cost to provide building core and support services

3. Small floor plate does not allow more recreation space without sacrificing residential units

4. Without variance on size of outdoor recreation space, would not be able to provide any outdoor space

C. No detriment to the public good

1. Zoning Regulations require residential on this property

2. Applicant has agreed to provide a ten foot setback at the rear above the third floor

3. Half the units would face the street, the other half would be set back from the facing residential building across an eighteen foot alley

4. Are substantial recreation opportunities (active and passive) in the immediate and general area

VIII. Standards for the roof structure special exception (§411.11)

A. Where impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area

B. that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable

C. the Board of Zoning Adjustment shall be empowered to approve the location, design, number and all other aspects of such [roof] structure ...

D. Provided that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.

IX. Compliance with the special exception standards for roof structure

A. Size of building lot and other conditions

1. Lot is narrow for typical high rise construction

2. With normal penthouse size, would have an area of only 37.5 feet wide which could be covered

B. Unduly restrictive and unreasonable

1. With walls of equal height, would either have penthouse that would be too low to provide proper elevator equipment, including access to the roof, or would have insufficient space to house building mechanical functions

2. Unreasonable to provide enclosure of equal height

C. Impact on light and air of other buildings

1. Roof structures meet all setback requirements

2. Penthouse heights are lower than the maximum permitted

3. With height of 17.5 feet for the central penthouse and screen walls of six feet for side mechanical enclosures, can meet building service requirements and still be aesthetically pleasing

4. Adjoining buildings to the north and south are substantially lower

X. Consistency with the Comprehensive Plan

A. Land Use element and maps - property included in mixed-use high density commercial/high density residential category

B. Downtown element

1. Major policies

a. Emphasizes significant residential community

b. Mount Vernon Square subarea should be a primary location for residential development

2. Residential land use

a. "Undertake a variety of public and private programs to achieve a major increase in residential units"

b. "Encourage residential in-fill as well as compatible major new residential development"

c. "Encourage residential use as part of mixed-use projects south of Massachusetts Avenue, N.W."

d. "Encourage residential use as part of mixed use projects extending south through Chinatown and Gallery Place to connect with the proposed residential area on Pennsylvania Avenue, N.W."

C. Ward Two Plan (10 DCMR Chapter 13)

1. Housing

a. "Stimulate production of new and rehabilitated housing to meet all levels of need and demand and to provide incentives for the types of housing needed at desired locations" (§1304.1(a))

b. "Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land-use policies" (§1305.1(a))

c. "Recommend suitable regulatory, zoning, tax and financing incentives under appropriate controls to meet housing production goals" (§1305.1(c))

2. Land Use

a. Objectives for residential land use:

"Develop new housing in Downtown in the area extending north of Pennsylvania Avenue through Gallery Place, Chinatown, and portions of Judiciary Square" (§1327.1(c)(2)

b. Development Opportunity Areas:

"Develop a major new residential mixed-use community, including hotels, in the Mount Vernon Square area" (§1339.1(b))

XI. Conclusions

A. Subject property is affected by exceptional conditions, because of the size of the site and the nature of the proposed building (required residential use)

B. Strict application of the Regulations would reduce the number of apartment units to approximately thirty-three or result in a larger number of small units, both adversely affecting the ability to build the project

C. The variances can be granted without substantial detriment to any surrounding properties

D. The walls of unequal height can be approved as a functional, aesthetic response to the problems resulting from the small area of the roof

E. Approval of the application, allowing a new apartment house, would be a significant contribution to city policy of encouraging residential in this part of Downtown

F. The application should be granted

SQUARE 486 and Surrounding Area



ATTACHMENT 2

Comparison of Areas of Residential Development
in Housing Priority Areas A and B

Development	Square	Status	Land Area (sq.ft.)
Subject project	486	Proposed	6,375
Avalon Bay Phase I	486 (subject)	Under construction	36,593
Avalon Bay Phase II	486 (subject)	Proposed	14,875
450 Massachusetts Avenue (Paradigm)	517	Under construction	44,833
400 Massachusetts Avenue (Greystar Atlantic)	517	Proposed	27,150
300 Massachusetts Avenue (Clark Realty)	529	Pre-development	34,525
525 Massachusetts Avenue (former Salvation Army property)	484	Proposed	30,600 (including hotel pad)

Excluding subject property:

Mean area: 28,829 square feet
Median area: 30,838 square feet