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July 29, 2002

CHRISTINE MOSELEY SHIKER
202-457-7167

Internet Address: cmshiker@hklaw.com

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

D.C. OFFICE OF ZONING
2002 JUL 29 AM 11:17

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

Dear Board Members:

On behalf of JBG/JER 6th Street, L.L.C., enclosed please find a proposed draft summary order for the above-referenced case reflecting the bench decision rendered by the Board of Zoning Adjustment at its July 16, 2002, hearing approving the application.

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

Sincerely,

Christine Moseley Shiker

Enclosure

cc: Rick Nero, Office of Zoning (Via Electronic Mail with enclosure)

BZA
Case No. 16897
Exhibit No. 47

Board of Zoning Adjustment
District of Columbia
CASE NO.16897
EXHIBIT NO.47

DRAFT

Application No. 16897 of JBG/JER 6th Street, LLC, pursuant to 11 DCMR § 3104.1 for a special exception from the roof structure requirements under Section 411 and pursuant to 11 DCMR § 3103.2 for a variance from the lot occupancy requirement under Section 772, a variance from the rear yard requirement under Section 774, variances from the residential recreation space requirements under Sections 773 and 1706.4(f), a variance from the parking drive aisle requirement under Section 2117, a variance from the loading requirements under Section 2201, and a variance from the Chinatown retail requirement under Section 1705 for the construction of an apartment house in the DD/C-2-C District at premises located on 6th Street, between G and H Streets, N.W. (Square 486, Lots 8, 801, 802, and 803). In its Prehearing Submission, the Applicant withdrew its request for the variance from the Chinatown retail requirement under Section 1705. At the hearing, the Applicant presented revised plans including a rear setback above the third floor and withdrew its request for variances from the parking drive aisle requirement under Section 2117 and from the loading requirements under Section 2201.

HEARING DATE: July 16, 2002
DECISION DATE: June 16, 2002 (Bench Decision)

SELF CERTIFICATION

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

SUMMARY ORDER

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Applicant, Advisory Neighborhood Commission (ANC) 6A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was referred to the Office of Planning (OP) for review and report. The OP report supported the application. The application was also referred to the Department of Public Works (DPW) for review and report. DPW did not submit a report.

The subject property is located within the jurisdiction of ANC 6A. ANC 6A, which is automatically a party to the application, filed a written statement in support of the application. The Board waived the rules to accept the late filed report.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR § 411 and variances from the strict application of the

requirements of 11 DCMR §§ 772, 774, 773, and 1706.4(f). Avalon Bay, an adjacent property owner, filed a Request for Party Status in opposition to the case on July 5, 2002. By letters dated July 12, 2002, and July 15, 2002, Avalon Bay withdrew its opposition and supported the application. Avalon Bay also attended the hearing and testified in support of the application.

The Board closed the record at the hearing. Based upon the record before the Board, and having given great weight to ANC's statement and the Office of Planning's report filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR §§ 3104.1 and 411 and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board also concludes that the Applicant has met its burden of proof pursuant to 11 DCMR § 3103.2 under §§ 772, 774, 773, and 1706.4(f), that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and 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 Map. It is therefore **ORDERED** that the application is **GRANTED** in accordance with the revised plans submitted at the public hearing.

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 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, Anne M. Renshaw, Curtis Etherly, Jr., and James H. Hannaham to approve; David A. Zaidain, not present not voting)

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

FINAL DATE OF ORDER: _____

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.

WAS1 #1103994 v1