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June 11, 2003

Board of Zoning Adjustment
Government of the District of Columbia
One Judiciary Square – Suite 210 South
441 Fourth Street, NW
Washington, D.C. 20001

Re: Supplemental Information as to Chinatown East LLC (BZA 17017):
Economic Factors vis-à-vis Economic Issues Cited in Another Case

Honorable Members of the Board:

This letter is submitted in response to the Board's request for additional information about the "economic viability" of Chinatown East LLC's project in the above-captioned case, supplementing the copy of an economic report we submitted at the conclusion of the hearing to the staff. This letter also adds some additional information about project economics and development costs utilizing "combined lot" authorities. Ms. Pamela Bundy, principal of Chinatown East LLC, concurs with the contents of this letter.

Overall Economic Viability:

As part of Applicant's case for variance relief, Applicant noted the similarities between the instant case (BZA 17017) and a case the BZA considered July 16, 2002, the application of JBG/JER to build a small apartment house on several contiguous mid-block lots located on the same side of Sixth Street just one block south of the land owned by Chinatown East LLC (BZA 16987). JBG/JER's total site was only slightly larger than that of Chinatown East LLC.

Below are the Board's own Notices of each case (emphasis added):

17017 **Application of Chinatown East LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the **lot occupancy** requirements under section 403, a variance from the **rear yard** requirements under section 404, a variance from the Downtown Development (DD) district's **Chinatown provisions** under section 1705, and variances from **floor area ratio (FAR)** requirements under sections 402 and 1707 and Chapter 17, or in the alternative to a portion of the FAR variances sought, pursuant to 11 DCMR §3104.1, **a special exception from the roof structure** set back provisions under section 411, to construct

BZA
Case No. 17017
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO. 17017
EXHIBIT NO. 32

an apartment building in the DD/R-5-E District at premises 809 - 813 6th Street, N.W. (Square 485, Lot 46).

16897 **Application 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, a variance from the **lot occupancy** requirements under section 772, a variance from the residential recreation space requirements under section 773 and subsection 1706.4 (f), a variance from the **rear yard requirements** under section 774, a variance from the parking drive aisle requirements under section 2117, a variance from the loading requirements under section 2201, and a variance from the **Chinatown retail requirements under section 1705**, for the construction of an apartment house in the DD/C-2-C District at premises 6th Street, between G and H Streets, NW (Square 486, Lots 8, 801, 802, and 803).

The Board granted application 16897 at the conclusion of the hearing.

In the course of Chinatown East LLC's case, Applicant noted that the cases differed in some respects, as well, notably the underlying base zoning (R-5-E versus C-2-C) but that the three-pronged test for variances was identical as a legal standard. As Applicant in Chinatown noted, the Summary Order of approval in BZA 16897 (attached) indicates that the variance first sought for relief from the "Chinatown" provisions was withdrawn, and the Transcript and Record indicates the applicant was ultimately able to satisfy the requirement through a combined lot development arrangement. Chinatown East LLC indicated it had not considered "combined lot" option under §1708 since it felt its situation fully satisfied the variance requirements it sought in the first place: *uniqueness; practical difficult; neither causing any detriment to public good nor diminishing the integrity of the zone plan.* Applicant continues to hold this view. See below.

At the conclusion of Chinatown East LLC's presentation June 3, Applicant noted the economic arguments advanced as part of, but not only part of, the rationale for approving the variances JBG/JER sought in BZA 16897 and that the Board granted. These arguments were set forth in several places, notably the report dated July 15, 2002, prepared by Leonard Bogorad of Robert Charles Lesser & Co., LLC, Real Estate Advisors. Chinatown East LLC asked the Board to accept a copy of this report in the Record of Chinatown East LLCs case. I supplied a copy of his report to staff for this purpose at the close of the hearing.

As Chinatown East LLC's land use advisor, I asked the principal of Chinatown East LLC, Ms. Pamela Bundy, to comment on that report briefly for the Board. She did, stating in summary that that her project would not succeed or proceed without the Board granting the relief sought, largely for the same factors as Mr. Bogorad cited in his earlier report.

In the earlier case, JBG/JER through Leonard Bogorad compared two scenarios, the requested project with 46 apartments spread across 12 floors and an FAR of 10.2 versus a somewhat smaller project of 42 units across 12 floors and an FAR of 9.1. Effectively, he concluded that this relatively small difference in FAR (about ten percent) would double the project's internal rate of return, thereby boosting it from a level too low to justify proceeding (10.1 %) to one that where project initiation would be prudent (19.9 %). He found that there

was a critical viability difference with as few as four units at stake in a project that, overall, is one third larger than that proposed by Chinatown East LLC.

In the case of Chinatown East LLC, the same factors of cost of land and development apply, further constrained as well by the double jeopardy of design and development restrictions imposed by complex zoning rules (but ones where the Board can be asked to grant relief) and the additional, albeit exogenous, site development limits imposed by the Historic Preservation Review Board. Simply put, in a project that starts with fewer units, here 30, each unit lost has a greater impact on return than would be the case in a project of 40 (JBG/JER), 50 or more units.

The present DD/R-5-E ***zoning*** limits development to an FAR of 6.0, within an overall height limit of 90 feet, lot occupancy of 75 percent, and a rear yard (at 90 feet of height) of 22.5 feet. An apartment project could have been built within these parameters with 8 stories, each with 4 units, a total of 32 apartment units. The design would satisfy rear yard and lot occupancy standards. The core for fire stairs and elevator would have been centered within the building mass, presenting no need for special exception relief for its roof structure. (This project would have encountered an issue with the Chinatown preferred use provisions, nothing more; see below).

But, Historic Preservation design review dictated that the height be no more than that of the Gospel Mission, the tallest of the buildings on Square 485 contributing to its character, located to the immediate east of Chinatown East LLC's proposed apartment, effectively lopping off two stories. At four apartments per story, the immediate effect was a loss of eight units. This would take the projected internal rate of return deep into negative territory. HPRB indicated that these "lost" units could be relocated, with appropriate zoning approval, in an expanded floor plate. Applicant thus sought to occupy the entire site, allowing five apartments/floor over six stories, yielding 30 units – a slight, but still tolerable reduction from the original program of 32 units.

Applicant would not be able to proceed with fewer than 30 apartments and, now, without relief from the Chinatown Preferred Use requirements in the "envelope" allowed by both zoning and HPRB.

Adding to or substituting the Chinatown subarea's 0.5 "preferred use" FAR to either the original or revised project virtually commands space at the ground floor level (not required by the regulations, but by the very nature of nearly all of the "preferred uses" listed in §§1710 and 1711). This would eliminate five apartment units on what is now the main/entrance floor level, reducing the project to 25 units, which would be fatal to project economics (the preferred uses that could reasonably be considered is limited, and uses such as "art gallery" and "artist supply store," and most retail uses are not noted for their superior rent paying abilities as compared to the resources and operating income generated by stable condominium ownership and maintenance fees).

Moreover, providing all or much of the 0.5 FAR of preferred uses on the ground level would also displace nearly all of the vehicular parking provided on the tapered floor that now "slides under" the building's main floor from the entrance to the parking level at the eastern end of the property, triggering a need for variance relief from parking requirements

for both the residents' units and whatever required parking spaces the preferred use(s) themselves would generate. If the 0.5 FAR were added to the overall scale of the project, this would also force its internal ceiling heights to be reduced constrained by HPRB's, but not zoning's, height limit.

Applicant's architect, Eric Colbert, noted that the size of the lot would not allow ramping to potential lower levels as the ramps would consume so much of the land from aisles down, turning and returning in a space just 60 feet wide (that dimension of the lot since HPRB had directed that the entrance to and exit from the garage not be along the east-west alley along the longer, southern edge of Chinatown East LLC's lot) that the result would be mostly ramp and a few spaces, i.e., it would not be economically viable.

Ramping up to a garage or parking level "sandwiched" between the preferred uses at the ground floor and apartments above might work "mechanically" but would result in a loss of one additional floor of apartments under the HPRB imposed height limit, adding another nail to the economic coffin. It would also create a frontage for that level alien to anything like that now on that segment of Sixth Street. Reducing the project from 25 to 20 units would, of course, further undermine rates or return and project viability.

Adding such preferred uses at the ground floor level would also have the effect of altering the historic character, and charm, of the frontage of the east side of Sixth Street from H to Eye Streets: First floor levels of all the properties facing the east side of Sixth Street are now located well above the sidewalk, with some entrances to "English basement" levels being provide from the sidewalk or public space ("the parking"). Applicant's design, as approved by HPRB, continues the basic planes of fenestration of the first and second stories of the contributing, turn of the late 1800's and early 1900's residential buildings either side of Chinatown East LLC's site, buildings that now provide a mix of residential and other uses characteristic of Chinatown, even if not fully consistent with the use provisions of the underlying zoning regulations that were established long after the buildings were built, altered, and occupied. **Establishing preferred uses at the ground level would disrupt that fundamentally, clashing with the historic character.**

Having fewer than 30 apartments spreads out the cost of development across too few units to result in viable project economics, paralleling the situation Bogorad described in his report as discussed above. The site would remain a parking lot.

Kindly note that in the earlier case, you accepted Bogorad's illustrative projections into evidence; you did not require the Applicant in that case to supply its own, proprietary, *pro forma's*. Here, we ask that you accept Bogorad's projections as illustrating the significant effects seemingly small changes can have in the overall "bottom line." As Ms. Bundy stated, she can make the project "work" at 30 apartments, two fewer than originally proposed. But, a project that provides either fewer or smaller apartments will not succeed and will not be built: the land will remain vacant, the gap in the Sixth Street's teeth four decades ago will remain with its open view to the innards of Square 485, and the value of the property to the City will remain limited to taxes on the land and parking operations.

Chinatown Use Provisions and Combined Lot Provisions:

Having to secure a combined lot arrangement to satisfy what is clearly an unusual, and possibly unintended, rule – *requiring* ***non-residential*** *uses in a residential zone district and in a residential building*[1] – adds needless complexity, delay, and significant legal costs to the project. The specific Chinatown subarea requirements are also at odds with rules that broadly exempt apartment buildings, except in Chinatown, from most DD rules (see §1701.6). Attempting to satisfy the Chinatown required use provisions utilizing combined lot authorities, *assuming they can be interpreted as applying*,[2] adds costs of securing a partnering property (which must be in the Chinatown subarea, creating an uncertain time line at the start); and completing the arrangements, including preparing, executing and recording covenants (processing time could be six months or more once willing partners are in conceptual agreement; legal expenses could approach or exceed $10,000 over and above the payment the other party to the combined lot agreement might negotiate to cover the recipient's burdens in perpetuity under the required covenant).

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1 Zoning Commission Order 681, adopted in 1991, changed the prior HR/SP-2 zoning that had been mapped over the entirety of Square 485 and a wider area extending east and south through Judiciary Square, to the present mix of DD/R-5-E (then DD/R-5-D) and DD/C-2-C. The Order does not elaborate on the Commission's intent of mapping DD in conjunction with any Residence base zones, within Square 485 or elsewhere in the overall "DD" overlay's area. The same Order established the vast majority of the rules for the DD overlay, including those for the Chinatown subarea.

The Board of Zoning Adjustment should understand the history of the present Chinatown subarea's rules. When first advertised in the ***D.C. Register*** of January 12, 1990, the Zoning Commission proposed language that differs significantly from that finally adopted. As initially proposed (see pp. 524-527 of the January 12 issue of the ***D.C. Register***, copies attached) the section's use provisions would have had two parts:

(1) One part would have required a minimum FAR of 0.25 *". . . on the ground floor level to retail or wholesale businesses selling goods or services of a predominantly Chinese or Asian origin . . ."* throughout the entire Chinatown subarea (as proposed at §1705.3(a), page 525); and

(2) The other part would have required more of the Chinese/Asian uses or other "preferred uses," but only on the portions of the Chinatown subarea zoned DD/C-2-C or DD/C-3-C (§1705.3(b), also page 525). In areas so zoned (and NOT in DD/Residence zones), a total "preferred use" requirement of at least 1.0 would have applied, of which at least 0.25 would have had to have been provided on the ground floor with just the uses specified in proposed §1705.3(a)).

For reasons that are not documented in Order 681 (one can contemplate significant Constitutional issues), the initial "retail or wholesale businesses ... of Chinese and Asian origin" language was not adopted and the present language, focusing just on the preferred uses of what are now §§ 1710 and 1711 emerged and survives. One could imagine that the Commission could have meant to limit the Chinatown preferred use provisions to just the parts of Chinatown zoned DD/C-2-C and DD/C-3-C (as first advertised) or to expand the exemptions elsewhere to apartment buildings in the Chinatown subarea, but neither is found in the adopted regulations, prompting the need for the relief Applicant seeks.

The relief the Applicant is seeking relief from the Chinatown preferred use requirements, along with the other variances, are area variances. The information Applicant provided about project economics and viability supplements other facts that are, in and of themselves, sufficient to grant each.

2 Whether the "combined lot" provisions apply or not is not that clear. Since we seek another means of curing the Chinatown "preferred use" issue, via a variance, this memorandum will not explore the complexities of that question.

Since the variance factors seem so clearly met, Applicant continues to seek variance relief in this complex situation from Chinatown preferred use requirements, as well as the other variances and the special exception, sought in its case.

Had the Chinatown preferred use provisions been the only "zoning issue" the project faced (as might have been the case with the original eight-story/32 apartment unit program), it could have been prudent to seek a solution utilizing the authorities of the combined lot provisions if ultimately determined as applicable. Thus, it was and remains prudent to seek "Chinatown" relief from the Board directly in this case.

Conclusion:

On behalf of the Applicant, Chinatown East LLC, I thank you for requesting and considering the additional information herein provided. Although we feel there is already a sufficient record to grant all elements of the relief sought, this additional information fortifies Applicant's economic arguments. We thus urge the Board to grant the relief sought and direct staff to issue a suitable Summary Order of approval.

Respectfully,

Lindsley Williams

Attachments:

BZA Order 16897 of JBG/JER 6th Street, LLC (July 16, 2002)
D.C. Register of January 12, 1990, pp. 525-527

cc: Office of Planning (Stephen Cochran, AICP)
Commissioner Charles Docter, ANC 6C-09

WAS1 #1189403 v3

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

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), 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).

Note: In its pre-hearing 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)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was 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, 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 §§ 3104.1 and 411, and variances from the strict application of the requirements of 11 DCMR §§ 3103.2, 772, 773, 774, 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.

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, 772, 773, 774, 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, Office of Zoning

FINAL DATE OF ORDER: JUL 30 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.

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 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). 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. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16897

As Director of the Office of Zoning, I hereby certify and attest that on JUL 30 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:

Whayne S. Quin, Esq.
Holland & Knight LLP
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Washington, D.C. 20006

Ivette Basterrechea, Chairperson
Advisory Neighborhood Commission 6A
P.O. Box 76680
Washington, D.C. 20002

Robert L. Hall, Jr., Commissioner 6A01
Advisory Neighborhood Commission 6A
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Sharon Ambrose, City Councilmember
Ward Six
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Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
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rsn

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

JAN 12 1990

(b) The art school or art center shall be operated under centralized management as a single institution.

1704.9 In order to qualify for the bonus indicated in 1704.5(b), an art gallery or museum must have an entrance at sidewalk level from 7th Street or from G Street and must have windows and signage oriented to the same street at ground level or above.

1704.10 Bonus density not to exceed 0.5 FAR may be used to develop office space in lieu of residential space as required in Section 1706 of this chapter.

1704.11 A nonprofit arts use shall be entitled to twenty-five percent (25%) of density bonus in excess of the bonus ratio indicated in Subsection 1704.7.

1704.12 In addition to the credit for the floor area itself, floor area devoted to art and entertainment uses listed in Section 1714 that has a ceiling height greater than ten feet (10') shall count toward meeting the minimum required square footage at a rate of 1:1 for each ten feet (10') in height above ten feet (10').

1704.13 Bonus floor area that is earned pursuant to paragraph (e) of Sub-section 1704.7 may not be used in addition to bonus floor area that would be earned pursuant to paragraphs (a) through (d) of that Subsection.

1705 CHINATOWN

1705.1 The principal policies and objectives from the Comprehensive Plan for the Chinatown area are to:

(a) Protect and enhance Chinatown as Downtown's only ethnic cultural area;

(b) Maintain and expand the existing concentration of retail uses emphasizing Chinese and Asian merchandise and related wholesale operations serving residents, visitors, tourists and business travelers;

(c) Reinforce the area's economic viability by encouraging mixed use development, including substantial housing; cultural and community facilities; offices; retail and wholesale businesses; and hotels; and

(d) Protect existing housing and the most important historic buildings with suitable

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preservation controls, residential and commercial zones and economic incentives.

1705.2 The provisions of this section apply to properties in the following squares: 428, 429, 452, 453, 454, 485 and 486.

1705.3 The following commercial use provisions shall apply.

(a) A building that fronts one one of the streets specified in subparagraph (1) of this paragraph shall devote not less than 0.25 FAR equivalent on the ground floor level to retail or wholesale businesses selling goods or services of predominantly Chinese or Asian cultural origin; provided, that:

(1) The applicable street frontages shall be H Street, from 5th to 8th Streets, 7th Street for a distance of one-half (½) block north and south of H Street, and 6th Street for a distance of one-half (½) block south of H Street; and

(2) The Zoning Administrator may, at his discretion, refer an application for a building permit or for a certificate of occupancy to the Director, Office of Planning, for a review and report within thirty (30) days as to whether the proposed uses should be deemed qualifying pursuant to this paragraph;

(b) Including the space required by Paragraph (a) of this subsection, each building in a DD/C-3-C or DD/C-2-C District shall provide not less than 1.0 FAR equivalent devoted to retail, service and entertainment-related uses from Sections 1713 and 1714 and wholesaling accessory to those uses;

(c) A building that provides 2.0 FAR or more of residential uses or that is located in the DD/C-2-C District in Square 485 shall be subject only to the use requirement in Paragraph (a) of this Subsection and shall be exempt from the additional requirement specified in Paragraph (b);

(d) A building located on a lot of 5,000 square feet or less and having a height of six (6) floors or less at and above grade shall have a preferred use requirement of not less than

0.5 FAR of uses from Sections 1713 and 1714 combined; provided, that:

1) Paragraph (a) of this Subsection shall be complied with; and

2) The property shall not have a residential use requirement as provided in Section 1706.

1705.4 In Square 485 a residential building which is brought up to building code and which is covenanted to continue in residential use for twenty (20) years or longer shall be eligible for transferable development rights equal to one and one half times the floor area maintained in residential use.

1705.5 If a building in the Chinatown subarea provides preferred uses in excess of the requirements specified in subsection 1706.3, or if it is a historic building, the project may be eligible for development flexibility in the form of bonus density, combined lot development and transferable development rights as provided in sections 1708 through 1710 of this chapter.

1705.6 A building that provides the required 1.0 gross floor area equivalent for preferred uses specified in subsection 1705.3, and that includes any of the bonus uses indicated below, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

		Space Devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(a)	Grocery store or other use qualifying under Paragraph 1703 (a)	1	to	3
(b)	Uses from sections 1713 and 1714, in excess of the 1.0 FAR equivalent	1	to	1

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required by paragraph 1705.3(b)

1705.7 A building that is located in both the Chinatown and Arts District subareas, specifically those lots in Squares 405, 429, and 454 south of a line extending the midpoint of G Place eastward from 9th Street to 6th Street may comply with the preferred use provisions of either Section 1704 or 1705 or a combination of the two.

1706 RESIDENTIAL AND MIXED USE DEVELOPMENT

1706.1 The policies and objectives for residential use and development in and near Downtown as specified in the Comprehensive Plan are to:

(a) Encourage construction of new housing and retention of existing housing so that a sizeable residential component is created that will help accomplish the balanced mixture of uses essential to a "Living Downtown";

(b) Create the greatest concentration of housing in the Mount Vernon Square area;

(c) Encourage residential and mixed use development along Massachusetts Avenue;

(d) Promote mixed use development including residential use south of Massachusetts Avenue, extending to the south through Judiciary square north, Chinatown, and Gallery Place; and

(e) Support the significant residential development in the Market Square subarea in the 7th Street and Pennsylvania Avenue area.

1706.2 If the residential uses required by this section are developed on the same lot as nonresidential development, no Certificate of Occupancy shall be issued for the nonresidential space until a Certificate of Occupancy has been issued for the residential space; if they are developed in combination with another lot or lots, the timing of development shall be as provided in Paragraph 1709(g).

1706.3 The housing requirements and incentives of this section shall be applicable only in the Housing Priority Area, which shall be divided into two (2) subdistricts, north and south of Massachusetts