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**Outline of Testimony
before the Board of Zoning Adjustment**

BZA Application No. 17831

14th and U Streets, N.W.

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

November 5, 2008

I. Site location and description

- A. Located in the block bounded by 14th, 15th, T and U Streets, N.W.
- B. Comprised of Lots 70, 71, 73, 830 and 831 in Square 205
- C. Corner lot with frontage on two streets:
 - 1. U Street: approximately 169 feet
 - 2. 14th Street: approximately 350 feet
- D. Land area of approximately 50,229 square feet
- E. Currently improved with:
 - 1. Combination of one, two and three story structures devoted to nonresidential uses (mostly retail)
 - 2. Parking lot and other accessory parking areas

II. Description of surrounding area

- A. 14th and U Street corridors, included in the Greater U Street Historic District

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District of Columbia

CASE NO. 17831

EXHIBIT NO. 46

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B. Remainder of Square 205

1. To the west:

a) Alley system comprised of:

- (1) Waverly Terrace, a 15 foot wide north-south alley between T and U Streets**
- (2) Paloma Way, a 30 foot wide east-west alley crossing Waverly Terrace in the middle of the square**
- (3) Treto Way, a 30 foot wide north-south alley at the east end of Paloma Way immediately west of the subject site**

b) Large 9 story warehouse immediately adjacent to the site at 1420 U Street

c) Mixed moderate density apartment buildings dwellings along 15th and T Streets

d) Additional commercial buildings along the south side of U Street

e) Gas station at the southeast corner of 15th and U Streets

2. To the south: low-rise commercial buildings at the corner of 14th and T Streets

C. To the north:

1. U Street

2. Reeves Center (at the northwest corner of the intersection of 14th and U Streets)

3. Campbell Heights high-rise apartment house at the northeast corner of 15th and U Streets

D. To the west: predominantly residential development extending into the northern part of the Dupont Circle neighborhood

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E. To the south:

1. Commercial development along both sides of 14th Street, transitioning to mixed use development (apartment houses with ground floor retail)
2. Moderate density residential buildings along the east-west streets

F. To the east:

1. Low rise commercial (including a U.S. Post Office) along the east side of 14th Street and the south side of U Street
2. The Ellington apartment house on the north side of U Street between 13th and 14th Streets and the Langston Lofts at the southeast corner of the intersection of 14th and V Streets, both with ground floor retail

III. Existing zoning: ARTS/CR and ARTS/C-3-A

A. CR (approximately 33,466 square feet)

1. Uses (§601)
 - a) Commercial use permitted as a matter-of-right, including retail, service and office use
 - b) Residential
2. Height - maximum of 90 feet (§630)
3. Density: maximum of 6.0 FAR, with nonresidential uses limited to 3.0 FAR (§631.1)
4. Lot occupancy – residential uses limited to 75% (§634.1)
5. Rear yard – for residential buildings, minimum of 3 inches per foot of height, not less than 12 feet (§636)
6. Side yard - not required (§637)
7. Public space at ground level (§633) – minimum area equal to 10% of total lot area

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8. **Parking (§2101.1):**

- a) **Apartments: minimum of 1 space for each 3 dwelling units**
- b) **Retail and service: minimum of 1 space for each 750 square feet of gross floor area in excess of 3,000 square feet**

B. C-3-A (approximately 16,763 square feet)

- 1. **Multiple dwellings and retail and service uses are permitted as a matter-of-right**
- 2. **Height - maximum of sixty-five feet, no story limitation (§770.1)**
- 3. **Floor area ratio – maximum of 4.0, of which no more than 2.5 may be devoted to other than residential purposes (§771.2)**
- 4. **Maximum percentage of lot occupancy for residential uses – seventy-five percent (§772.1)**
- 5. **Rear Yard – 2.5 inches per foot of vertical distance, but not less than twelve feet (§774.1)**
- 6. **Side Yard – None required (§775.5)**
- 7. **Parking (§2101.1):**
 - a) **Apartments: minimum of 1 space for each 2 dwelling units**
 - b) **Retail and service: minimum of 1 space for each 300 square feet of gross floor and cellar floor area in excess of 3,000 square feet**

C. ARTS Overlay District

- 1. **Height (§1902.1):**
 - a) **Maximum of seventy-five feet in C-3-A District**
 - (1) **No roof structure to exceed 83.5 feet**
 - (2) **1:1 setback above 50 feet where there is a zone boundary line with a residence district**

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- b) In CR, 1:1 setback above 65 feet where there is a zone boundary line with a residence district
- 2. Retail and service uses and arts and arts-related uses shall occupy no less than fifty percent of the ground level of each building that fronts on 14th Street (§1901.1)
- 3. Street frontage design requirements (§1903)
 - a) Both U and 14th Streets are specified
 - b) No access to required parking or loading
 - c) Not less than 75% of the streetwall to a height of not less than 15 feet shall be constructed to the street line
 - d) Display window and entrance requirements

IV. Proposed development

- A. Use: apartment house with ground floor retail and service uses
 - 1. Total of 210 – 230 units
 - 2. Approximately 20,000 square feet of retail and service uses
- B. Height:
 - 1. Maximum of 90 feet (9 stories)
 - 2. In C-3-A zone, maximum is 75 feet (7 stories)
 - 3. Contributing historic structures retained at 2 stories and 1 story
 - 4. Other portions of the building are at various lower height levels
- C. Percentage of lot occupancy: 78.5% overall
- D. Parking: total of 147-148 spaces provided

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V. Relief requested:

A. Variances

1. Percentage of lot occupancy:

a) Allowed: 75%

b) Provided:

(1) C-3-A: 61.6%

(2) CR: 86.3%

(3) Overall: 78.5%

c) Variance: 11.3% in the CR portion

2. Rear yard:

a) Required: 15.6 feet (C-3-A) and 22.5 feet (CR)

b) Provided: none

c) Variance: 15.6 and 22.5 feet

3. Public space at ground level (CR only):

a) Required: 3,346 square feet

b) Provided: 50 square feet

c) Variance: 3,296 square feet

4. Location of driveway to required parking on 14th Street

B. In the alternative, special exception to allow the location of driveway to required parking on 14th Street (§1906.1)

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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. Unusual and irregular shape of the site made up of multiple lots having varying depths and widths
 - 2. Presence of contributing historic structures to be retained and incorporated into new development
 - 3. Two different underlying zone districts and one overlay applicable to the site
 - 4. Network of public alleys provide access to the rear by way of a circuitous route with two of the streets surrounding the square being one way
- B. Practical difficulty
 - 1. Presence of historic structures to be retained and requirement to bring the building to the streetwall result in building covering more of the lot than otherwise allowed
 - 2. Cannot achieve permitted overall FAR without greater coverage

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3. Concerns of the Historic Preservation Review Board (HPRB) required that the entire site be filled in along the 14th and U Street frontages, thereby precluding the ability to provide a rear yard
 4. Overlay requirements preclude access from both of the streets on which the site fronts and access through the alley is indirect and circuitous through alleys that are in part only 15 feet wide
- C. No detriment to the public good
1. Overall lot occupancy measured at the second floor (the lowest level where residential use begins) is only slightly above the maximum permitted
 2. Occupancy at the third and higher floors complies with the maximum permitted
 3. Design requirements imposed by HPRB resulted in street façade without breaks along 14th Street, which is consistent with the requirements of §1903.3
 4. Adding more public space on site would result in loss of ground floor retail, a use encouraged and in part required by the Overlay
 5. Already is one curb cut for the property on 14th Street

VIII. Standards for the exception to the ARTS Overlay requirement (§1906.1)

- A. Feature at size and location proposed will substantially advance the purposes of the ARTS District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience or general welfare of persons living, working or visiting the area
- B. Exceptional circumstances affect the property make compliance difficult or impossible or the development provides alternative public benefits
- C. Architectural design will enhance the urban design features of the immediate vicinity
- D. Board shall refer the application to the State Historic Preservation Officer for review

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- E. Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently and to create no dangerous or otherwise objectionable traffic conditions
 - F. Board may impose conditions regarding design, appearance, signs, size, landscaping and other requirements to protect neighboring property and to achieve the purposes of the Overlay
- IX. Compliance with the special exception standards for exception to the Overlay
- A. Advance purposes of the Overlay and not adversely affect neighboring property:
 - 1. Location of driveway on 14th Street provides most satisfactory access to the project, per the report of Gorove Slade
 - 2. Driveway location does not adversely affect neighboring property; in fact, alternative access through the alley may have a greater negative effect on properties located along the alley and on T Street
 - 3. Relatively low volumes of traffic to and from the garage across the sidewalk will not cause dangerous or adverse impacts to pedestrians
 - B. Exceptional circumstances
 - 1. Designation of both 14th and U Streets as "pedestrian streets" creates an exceptional situation
 - 2. Access to parking through the alley is difficult, in that it is indirect and circuitous and has greater impact on other properties and intersections
 - C. Architectural design
 - 1. Project has been designed to maintain continuous street façade and incorporate portions of 1 and 2 story contributing buildings
 - 2. Variety of heights to create interest in the design and to be sensitive to surrounding context
 - D. Historic preservation review
 - 1. Project has been before HPRB 4 times

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2. HPRB has approved the height, mass and architectural direction of the project

E. Access and egress

1. Access has been designed to minimize conflicts with pedestrian ways
2. Crossing the sidewalk on 14th Street is a safer situation than crossing the sidewalk on U Street through the existing alley location

X. Conclusions

- A. Combination of factors create the exceptional and extraordinary situation
- B. Combination of historic district considerations and overlapping and partially contradictory provisions of the underlying zoning and the Overlay create the practical difficulty in reaching the permitted matter-of-right density
- C. While driveway could be located at the western side of the building off the alley, location on 14th Street is inherently a better choice which does not adversely effect neighboring property or pedestrians on the sidewalk
- D. HPRB has given concept approval to the plan
- E. The application should be granted