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June 26, 2012

Via Hand Delivery

Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

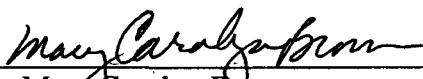
Re: BZA Case No. 18375 – Florida Avenue Residential, LLC
710 Florida Avenue, N.W. (Sq. 416, Lot 31)

Dear Board Members:

On behalf Florida Avenue Residential, LLC, we are submitting herewith an original and twenty copies of the Statement of the Applicant in support of the special exception and variance relief requested for the above-referenced property. Based on review of the project by the Historic Preservation Review Board ("HPRB"), the zoning calculations for the building have changed. An updated Form 135 is attached to this letter, which reflects those changes. Also, based on the comments received from HPRB, the Applicant reduced the size of the sixth floor, necessitating relief from the roof structure setback requirements. The initial application requested relief from section 770.6, which already incorporates the setback provisions. We look forward to the Board of Zoning Adjustment's consideration of this application at the hearing on July 10, 2012.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Mary Carolyn Brown

Attachments

cc: Paul Goldstein, OP (via hand delivery and email)
Advisory Neighborhood Commission 1B (via overnight mail)

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18375
EXHIBIT NO. 25

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

APPLICATION OF:	)	
	)	
FLORIDA AVENUE RESIDENTIAL, LLC	)	BZA APPLICATION NO. 18375
	)	
For area variances from the required standards	)	
for rear yard depth (§774), lot occupancy (§772),	)	ANC 1B
off-street parking (§2101.1) and loading (§2201),	)	
and special exception relief pursuant to section	)	<u>HEARING DATE:</u>
1906, from the streetwall requirements under	)	July 10, 2012
subsection 1903.3 and the roof structure	)	
requirements under subsection 770.6 to allow the	)	
development of a six-story mixed-use residential	)	
building with ground floor retail/service uses in	)	
the ARTS/C-2-B District at 710 Florida Avenue,	)	
N.W. (Square 416, Lot 31)	)	

STATEMENT OF THE APPLICANT

I.

Nature of Relief Sought

Florida Avenue Residential, LLC, an affiliate of The JBG Companies (“Applicant”), seeks area variances pursuant to section 3103.2, from the required standards for rear yard depth under section 774, the lot occupancy limits of section 772, and the number of off-street parking and loading facilities of sections 2101 and 2201, respectively, and special exceptions, pursuant to section 3104.1, from the requirements of sections 411 and 770.6 to allow roof structures with separate enclosure walls and less than the minimum set back from exterior walls, and a special exception pursuant to 1906 from the streetwall requirements of the Arts Overlay under section 1903. The zoning relief is necessary in order to construct a new six-story mixed use residential building with ground floor retail and services uses in the Arts/C-2-B District at 710 Florida Avenue, N.W. (Square 416, Lot 31).

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the requested relief pursuant to D.C. Code § 6-641.07 (2001 ed.) and 11 DCMR §§ 3103.2 and 3104.1.

III.

Background

A. Site and Vicinity Characteristics

1. The Property

The subject property is located at Lot 31 in Square 416 and has street frontage along Florida Avenue and 8th Street, N.W., Washington, D.C. Lot 31 measures approximately 124.5 feet along Florida Avenue, taking up half of the street frontage of the block, and extends approximately 140.5 feet south along 8th Street, with a total land area of 15,596 square feet. Portions of the zoning map and real estate plats showing the property are attached as Exhibits A and B. The site has been vacant since the construction of the Metrorail Green Line, whose tunnels run beneath the parcel.

2. The Vicinity

The property falls within the U Street Historic District along its north-easternmost boundary. Small-scale residential buildings are located adjacent to the property to the south and a parking lot is located immediately to the east, which serves the CVS Pharmacy in the southeast corner of the square. Other retail buildings are located along 7th Street and T Street. Across 8th Street to the west is another vacant parcel controlled by the Applicant, which will be developed with a companion residential building with ground floor retail.

Mid-rise and some large-scale commercial buildings line Florida Avenue in both directions. The D.C. Housing Finance Agency is located on Florida Avenue at 9th Street.

Howard University and its hospital are two blocks to the north across Florida Avenue. The thriving U Street corridor is just two blocks to the west, which includes several recently constructed condominium and apartment buildings, similar to what is proposed for this site. These include the Ellington (1301 U St NW), the Beauregard (11th and V Streets, N.W.), Union Row (2125 14th Street, N.W.), Langston Lofts (1390 V Street, N.W.), and the Murano (2117 10th Street, N.W.).

B. Zoning Parameters

The property is located in the ARTS/C-2-B District. The C-2-B District is designated to serve high-density residential and mixed uses. The C-2-B Districts are generally compact and located on arterial streets, in uptown centers, and at rapid transit stops. Building use may be entirely residential or a mixture of commercial and residential uses.

The Uptown Arts-Mixed Use (ARTS) Overlay is designed to encourage a scale of development, mixture of uses, and "other attributes such as safe and efficient conditions for pedestrian and vehicular movement...." 11 DCMR 1900.2(a). The ARTS overlay requires uses that foster pedestrian activity, especially retail, entertainment, and residential uses. Among its many purposes is to expand the area's housing supply and a variety of rent and price ranges. 11 DCMR 1900.2(d). The ARTS overlay provides bonus density incentives for owners to attract preferred retail, arts and services uses in this area.

The maximum permitted height in the ARTS/C-2-B District is 70 feet, with a maximum lot occupancy of 80 percent for residential uses. The maximum permitted floor area ratio ("FAR") for this site is 5.0 FAR, based on a combination of bonus density incentives, as follows:

- 3.5 FAR under the base C-2-B zoning (§ 771);



BEFORE THE BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA



FORM 135 – ZONING SELF-CERTIFICATION

Project Address(es)	Square	Lot(s)	Zone District(s)
710 Florida Ave NW	416	31	Arts/C-2-B

Single-Member Advisory Neighborhood Commission District(s): 1B-01

CERTIFICATION

The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter pursuant to:

Relief Sought	☐ §3103.2 - Use Variance	☒ §3103.2 - Area Variance	☐ §3104.1-Special Exception
Pursuant to Subsections	2201.1; 774.1		

Pursuant to 11 DCMR §3113.2, the undersigned agent certifies that:

- (1) the agent is duly licensed to practice law or architecture in the District of Columbia;
- (2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
- (3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

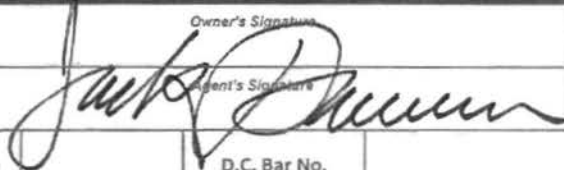
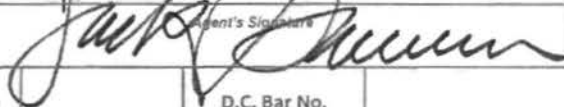
The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self certified in order to obtain, for the above referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22 2405)

Owner's Signature 	Owner's Name (Please Print) Florida Avenue Residential, LLC			
Agent's Signature 	Agent's Name (Please Print) J. Owen Boorman			
Date	D.C. Bar No.	or	Architect Registration No.	ARC101622

FOR OFFICIAL USE ONLY

Based upon review of the application and self-certification, the Office of Zoning determines, pursuant to 11 DCMR §3113.2, this application is

- ☐ Accepted for filing.
- ☐ Referred to the Office of the Zoning Administrator within DCRA, for determination of proper zoning relief required.
- ☐ Rejected for failure to comply with the provisions of ☐ 11 DCMR §3113.2; or ☐ 11 DCMR - Zoning Regulations.
Explanation _____

Signature		Date	
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ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Case No. _____

INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on this form. All certification forms must be completely filled out (front and back) and be typewritten or printed legibly. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form.
2. Complete one self-certification form for each application filed. Present this form with the Form 120 - Application for Variance/Special - Exception to the Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001. (All applications must be submitted before 3:00 p.m.)

ITEM	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE Deviation/Percent
Lot Area (sq. ft.)	15,956 sf	n.a.	12,764.8 sf	14,118 sf	1,353.2'
Lot Width (ft. to the tenth)	n.a.	n.a.	n.a.	n.a.	n.a.
Lot Occupancy (building area/lot area)	n.a.	n.a.	80%	90%	10%
Floor Area Ratio (FAR) (floor area/lot area)	n.a.	n.a.	5.0	5.0	n.a.
Parking Spaces (number)	n.a.	40	n.a.	29	11 parking spaces
Loading Berths (number and size in ft.)	n.a.	(1) 55' deep berth; (1) 30' deep berth	n.a.	(1) 30' deep berth	(1) 55' deep berth
Front Yard (ft. to the tenth)	0'	0'	n.a.	0'	n.a.
Rear Yard (ft. to the tenth)	n.a.	15'	n.a.	0'	15'
Side Yard (ft. to the tenth)	n.a.	n.a.	n.a.	n.a.	n.a.
Court, Open (width by depth in ft.)	n.a.	n.a.	n.a.	n.a.	n.a.
Court, Closed (width by depth in ft.)	n.a.	17'-8"	n.a.	18'	n.a.
Height (ft. to the tenth)	n.a.	n.a.	70'	70'	n.a.



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.

- 0.7 FAR additional, as the 20% increase under Inclusionary Zoning (§2604.2), which must be accounted for before ARTS bonus density may used (§1904.1(c));
- 0.3 FAR additional through the use of bonus density for the uses specified in §§1907 and 1908 referred to in §1904.2, to bring the FAR up to the maximum 4.5 allowed under §1904.1(b); and
- 0.5 FAR additional, under §1904.3, a separate bonus for providing at least 3.0 FAR of residential use.

See Letter from Zoning Administrator to Steven E. Sher, October 11, 2011, attached as Exhibit C.

C. Description of Proposed Development

The Applicant proposes to construct a new six-story residential building with ground floor retail on the vacant lot at the southeast corner of 8th Street and Florida Avenue, N.W. The main lobby entrance to the residential building will front on 8th Street, with retail spaces lining the ground floor along Florida Avenue and 8th Street. In order to increase the width of the substandard sidewalk on Florida Avenue, the ground floor has been set back approximately six feet along that street frontage. Presently, the width of the unobstructed portion of the Florida Avenue sidewalk is eight feet with a four-foot treebox zone. In contrast, the 8th Street sidewalk is 29 feet wide with a four-foot treebox zone. The additional six-foot set back along Florida Avenue will increase that width to ten feet clear with a six-foot treebox zone, in conformance with section 31.2.5 of the Design and Engineering Manual published by D.C. Department of Transportation (“DDOT”) and the Public Realm Design Manual jointly issued by DDOT and the Office of Planning (“OP”)(at page 3-4). Parking and loading facilities are accessed from a new curb cut on 8th Street at the south property line.

The Historic Preservation Review Board (“HPRB”) reviewed the design of the proposed new building on March 22 and May 31, 2012, and approved the height and massing in concept.

The Applicant will return to HPRB on July 26, 2012, for further review of the exterior architectural treatment of the building. In adopting the staff recommendation, HPRB noted that the project fulfills elements of the Uptown Destination District Plan, referred to as the DUKE Plan in honor of Duke Ellington, which was adopted by the D.C. Council in 2005. The plan identified this site, which was owned and cleared by WMATA for staging and construction of the Metrorail Green Line, as a gap in the U Street/Shaw neighborhoods. The plan calls for its redevelopment with high density residential uses and ground floor retail/entertainment uses to create a destination spot for the community and the city.

IV.

The Application Meets the Standards for Special Exception Review under the Zoning Regulations

A. Standard of Review.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning district, provided the specific regulatory requirements for the requested relief are satisfied. The D.C. Court of Appeals has consistently emphasized the narrow scope of the Board's discretion in reviewing special exception applications:

In evaluating requests for special exceptions, the Board is limited to a determination of whether the exception sought meets the requirements of the particular regulation on which the application is based. ... The applicant has the burden of showing that the proposal complies with the regulations; but once that showing has been made, the Board ordinarily must grant the application.

National Cathedral Neighborhood Ass'n v. D.C. Board of Zoning Adjustment, 753 A.2d 984, 986 n.1 (D.C. 2000). *See also Stewart v. D.C. Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)(noting that "[s]pecial exceptions, unlike variances, are expressly provided for in the

Zoning Regulations"). If the specific requirements of the regulation are met, in other words, the Board is generally precluded from denying an application for special exception relief.

B. Description of Special Exceptions

1. Roof Structure Relief.

The equipment on the roof is comprised of two stair towers, an elevator penthouse, and communal recreation space, as shown on Sheet A-107 of the architectural drawings. The elevator penthouse is located in the center of the roof and opens onto the communal recreation space on the west portion of the roof. "Stair D" is located at the south part of the roof, while "Stair E" is situated at the east end of the Florida Avenue bar of the building. Small mechanical units for each of the individual residential units are also located on the roof and screened by a metal wall. These individual units are less than four feet in height and are not subject to the roof structure requirements. See 11 DCMR § 411.17.

Housing for mechanical equipment or a stairway or elevator penthouse on the roof of a building or structure must be placed in one enclosure and the enclosing walls from the roof level must be of equal height. 11 DCMR 411.4 and 411.5. Additionally, the roof structures must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. 11 DCMR § 770.6. Here, in order to minimize the size and visibility of the roof structures, the Applicant proposes to house the stairway enclosures separately from the elevator penthouse and communal recreation space on the roof. The Applicant also seeks relief from the setback requirements for Stair D, which is located approximately 8 feet from the closest exterior wall where a distance of ten feet is required.

In order to comply with the requirement for one enclosure, the Applicant could build a continuous wall around all the equipment. However, such a wall would increase the massing and visibility of the penthouse, which would undermine the purpose of the regulations, which is to exercise a degree of architectural control over roof structures. 11 DCMR § 411. Instead the

separate enclosures for the stair towers and elevators will help minimize the appearance of the roof structures and protect the visual quality of the U Street Historic District. The surrounding walls will be of quality material to integrate them into the overall design of the building.

If the Applicant were required to set back Stair D an additional two feet, it would result in awkward interior unit layouts on the upper two floors, which have a smaller floor plate than floors 2, 3 and 4, as a result of the HPRB design review process. These upper floors were stepped back from the smaller historic structures along 8th Street to allow a better transition between the new construction and existing historic buildings. Significantly, Stair D is set back more than 18 feet from the exterior walls of floors 2, 3 and 4 and the south property line. This ample setback from the adjacent property and the limited ten-foot height of the stair enclosure, which is considerably less than the permitted height of 18 feet, 6 inches, is an improvement over what is otherwise permitted as a matter of right and affords greater protections to the surrounding historic community. The Applicant's proposal meets the spirit and intent of the regulations to exercise a reasonable degree of architectural control over roof structures and thus relief from sections 411.4, 411.5 and 770.6 is appropriate.

2. Streetwall Requirement (§ 1903.3)

Pursuant to section 1903.3 of the Arts Overlay District, each new building on Florida Avenue between 7th and 9th Streets must be designed so that not less than 75 percent of the streetwall is built to the property line. Here, the Applicant proposes to set back the streetwall at the ground floor level approximately six feet, in an undulating fashion to mimic the rhythm of the historic row fronts of the neighborhood, to ensure that the public sidewalk's width complies with applicable streetscape standards of DDOT's Design and Engineering Manual ("DEM"). The DEM and the Public Realm Design Manual issued in 2011 require a minimum pedestrian

clearance of 10 feet with a six-foot treebox zone. Further, under the DUKE Plan, the ground floor of new building on this site is to be developed with retail and entertainment uses that actively enhance the public realm and optimize pedestrian access to and among the neighborhood attractions.

The expansion of the sidewalk will not adversely affect neighboring properties or be detrimental to the health, safety, convenience, or general welfare of the public. Rather, it will greatly enhance the health, safety, convenience and welfare of the public by increasing the sidewalk width along Florida Avenue, which presently is extremely narrow at only eight feet wide "clear", with a four-foot treebox zone. This existing exceptional circumstance of the nonconforming sidewalk width warrants a deviation from the streetwall requirements. The resulting architectural treatment of the ground floor retail area will be greatly enhanced with the setback, and was well-received by HPRB. The Applicant will return to HPRB on July 26 for further design refinements to the project and thus requests flexibility from BZA to make adjustments to the exterior design, including the ground floor retail setbacks, to conform to the HPRB recommendations.

C. The Requested Special Exception Relief Will Be in Harmony with the General Purpose and Intent of the Zoning Regulations and Maps and Will Not Tend to Affect Adversely the Use of Neighboring Property

In addition to satisfying the specific requirements set forth in sections 770 and 1906.1, the Applicant must also demonstrate that the requested special exception meets the more general requirements of section 3104.1 of the Zoning Regulations. Before granting an application for a special exception, the Board must determine that the requested relief "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and

Zoning Maps." 11 DCMR § 3104.1. The waiver of the requirement for one enclosure wall and the setback requirement for Stair "D" sought by the Applicant in this case is consistent with the purpose and intent of the Zoning Regulations and Map and will not have any adverse impacts on neighboring properties.

The stated purposes of the Zoning Regulations are set forth in section 6-641.02 of the D.C. Code:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

D.C. Code § 6-641.02 (2001). Those purposes are reproduced in the text of the Zoning Regulations as well. *See* 11 DCMR §§ 101.1-101.2.

The requested special exception is in harmony with the purposes described above. The proposed multiple enclosure walls will not interfere with, and rather will enhance, the available light to building occupants or to any existing or proposed building located on adjacent properties. The proposal eliminates sections of the enclosure wall that might otherwise potentially affect light and air to adjacent properties. The height of the stair and elevator penthouses have been limited to ten feet and 15 feet, respectively, thereby minimizing any visual effects from the street and adjacent properties. These shorter penthouses are also amply set back from the street walls, which allows for a rooftop terrace that includes plantings and other green elements to help screen

the penthouses. The green screening and roof terrace will create favorable conditions for the health and recreation of District residents. Stair D is also amply set back from the south property line a distance almost twice its height and thus meets the spirit and intent of the setback requirements. Furthermore, the requested relief will not result in an excessive concentration of population on the site because it does not create any additional habitable space in the building. Finally, the requested waiver will not have and cannot have any adverse effect on neighboring properties since it reduces the size of the roof structure.

V.

The Applicant Meets the Standards for Area Variances under the Zoning Regulations

A. Description of Variances

1. Parking

The Applicant seeks relief from the parking requirements for the new development. Based on the proposed 95 residential units, the Applicant must provide 32 spaces (one for every three units). The retail space, at 8,421 square feet of gross floor area, generates a requirement of 8 spaces (in excess of 3000 square feet, one space for every 750 square feet). The Applicant proposes to provide a total of 29 parking spaces, all of which will be devoted to residential uses and none of which will be allocated for retail uses.¹

2. Loading

The Applicant also seeks relief from the loading requirements for the project. The residential uses require one 55-foot loading berth, one 200 square foot platform, and one 20-foot loading space. The retail uses require one 30-foot loading berth and one 100 square foot platform. The Applicant proposes to eliminate the 55-foot residential berth and share the 30-foot

¹ Please note that the traffic study attached hereto provides a slight difference in the number of spaces due to refinements to the garage plan since the traffic study was issued.

berth between the residential and retail uses. Additionally, the Applicant also proposes to eliminate the 100 square-foot retail platform and share the 200 square-foot platform between the two uses.

3. Lot Occupancy

Relief is also requested from the lot occupancy requirements for the residential portion of the building. Whereas 80 percent is the maximum permitted lot coverage for residential uses, the Applicant proposes 90 percent coverage on floors 2, 3 and 4, and 82.5 percent coverage on floor 5. No relief is required on the 6th floor, which has a lot occupancy of 79.5 percent.

4. Rear Yard

Finally, the Applicant seeks relief from the rear yard depth requirements. Whereas a 15-foot deep rear yard is required, the project will not provide any rear yard.

B. Standard of Review for Variance Relief

Under D.C. Code § 6-641.07(g)(3) (2001 ed.) 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; (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 zoning plan.

French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). See, also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

Applicants for an area variance need to demonstrate that they will encounter "practical difficulties" in the development of the property if the variance is not granted. See *Palmer v. D.C.*

Bd. of Zoning Adjustment, 287 A.2d 535, 540-41 (D.C. 1972)(noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." *See Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, the proposed project meets all three prongs of the variance test.

C. The Site's Extraordinary or Exceptional Conditions

The subject property is affected by several exceptional and extraordinary conditions. First, the property is trapezoidal in shape due to the confluence of a diagonal avenue (Florida) with a north-south street (8th Street), which affect the layout and configuration of residential units. Second, the sidewalk width along Florida Avenue is only eight feet "clear" and does not comport with the 16-foot standard under DDOT's DEM or the Public Realm Design Manual jointly published by DDOT and OP. Third, and most significantly, the site is encumbered by Metrorail tunnels, related air vents and the Metrorail "zone of influence" that impose severe design and construction constraints on the property.

The Metrorail Green Line tunnels run diagonally underneath the site, 27 feet below the surface, as shown on Sheet G-003 of the architectural drawings. Three-dimensional drawings of the tunnels are also included as Exhibit D. The Washington Metropolitan Transit Authority ("WMATA"), which controls the Metrorail system, has an absolute "no-build" 10-foot easement surrounding the tunnels. This limits the maximum depth of excavation for the project to approximately 17 feet below grade (depending on variations in grade elevation). The proposed development will have the bottom of the garage slab, at final completion, sitting approximately 14 feet below grade. Even achieving this depth poses significant difficulties in constructing the

support of excavation ("SOE") system. Traditional SOE systems typically require piles to be driven 10 feet below the lowest point of the foundations; which in this case would be a depth of 24 feet. The WMATA "no build" zone makes this traditional SOE system impossible. The SOE system proposed for this project, due to its uniquely proximate location within WMATA zones, is significantly more expensive than any traditional system and carries a premium of 150% over the generally accepted SOE systems.

However, in addition to the "no build" zone, the manner in which the WMATA tunnels were construction exacerbates the construction difficulties of the site and compounds the high cost of the SOE system. Unlike the majority of existing Metrorail tunnels, these particular tunnels are extremely susceptible to changes in soil pressure that occur during the construction process. As described in a letter from SK&A Structural Engineers to the Applicant,

[t]he existing WMATA metro tunnels beneath the planned development are bored tunnels with segmented precast liners, which, of all the types found in metro's transit system, are the most sensitive to adjacent construction. These tunnels are more sensitive to unloading of existing soil above the tunnels than they are to loading scenarios. That is, in the interim period when the complete excavation of the site has occurred and no new construction has been put back in place, the loss of overburden pressure from the soil makes the segmented pieces of the lining system susceptible to intolerable movement. A specialty consultant is required by WMATA to be retained by the ownership to analyze the magnitude of movement with finite element analysis during the design phase. The results of this analysis, which is now being done, could show that the basement levels have to be eliminated and have the required parking accommodated on levels currently planned as retail or residential. In addition to the analysis, an extensive tunnel monitoring program must be implemented by an owner's consultant to ensure that the adjacent construction SOE and foundation systems are functioning as designed. This monitoring system has to be done at a minimum weekly by a professional engineer throughout the duration of construction and requires a system of sophisticated electronic instrumentation, documentation, reporting and contingency measures.

Letter from SK&A Structural Engineers to Lauren Jezienicki, The JBG Companies, May 14, 2012 (copy attached as Exhibit E).

Unfortunately, the initial set of "as built" drawings that WMATA provided the Applicant were incorrect and did not indicate the sensitive nature of these particular Metro tunnels. Only after meeting with WMATA on April 19, 2012, well after the due diligence period had expired, were newly discovered and correct "as built" drawings provided to the Applicant. The tunnels, constructed with pre-cast sections that were bolted together, are the weakest of the types WMATA allowed to be built. The joints between each pre-cast section allow the tunnels to become very flexible when excavating and constructing above them. If the tunnels are allowed to move too much, they could eventually crack and fail.

As recommended by SK&A Engineers, the Applicant has engaged a consultant to perform a preliminary analysis to determine if the proposed below grade construction is achievable. If it is feasible, the Applicant will then be required to monitor the seismic activity and movement surrounding the tunnels during construction, and take corrective action as necessary.

D. Resulting Practical Difficulty

These efforts also dramatically increase up-front costs to the project and demand reserve capital to re-engineer and adjust construction if issues arise. Initial estimates indicate that WMATA constraints have increased normal SOE construction costs by 150 percent. In order for the project to remain viable in light of these extraordinary costs, and particularly those discovered only recently, the Applicant needs to maximize the allowable FAR on site. The Applicant cannot achieve the necessary density, however, unless zoning relief is granted from the loading, rear yard and lot occupancy requirements. As discussed below, the irregular lot size, sidewalk width requirements, and WMATA constraints all converge to create practical difficulties in conforming with the zoning requirements on the property. *See Gilmartin v.*

District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1168 (D.C. 1979) (uniqueness may stem from a confluence of factors).

1. Parking

Currently, the garage has been laid out as efficiently as possible to maximize the number of parking spaces, accommodate garage ramps and aisles, and provide access stairs, utility rooms and storage. The only way to achieve the requisite amount of parking would be to excavate another below grade level or convert ground floor space to parking. The first option is impossible, given the WMATA constraints described above, and the second is impractical. The second option would reduce the amount of retail square footage, which is inconsistent with the purposes of the ARTS Overlay and the DUKE Plan to encourage preferred retail and arts uses and active streetscapes within the U Street corridor. It is also the most valuable space, which is critical to support the costs of the sophisticated engineering and construction techniques required for the site.

2. Loading

Similarly, if the Applicant were required to provide both the 55-foot loading berth required for the residential uses and the 30-foot berth required for retail uses, as well as the additional 100-square foot loading platform, the ground floor would become extremely inefficient and further reduce the amount of active retail uses that are envisioned along 8th Street under the DUKE Plan. Under DDOT's DEM, curb cuts are not permitted along major arteries such as Florida Avenue and consequently the garage ramp and loading facilities are located off of 8th Street, as shown on Sheet A-101. If the Applicant were required to provide a 55-foot loading berth and second platform, the size of the 8th Street retail space would be reduced and have only a depth of approximate 20-25 feet, which severely compromises the type of retailers

that could use the space. Under the DUKE Plan, 8th Street is envisioned as a restaurants and entertainment destination hub. These types of uses typically require a depth of more than 25 feet to accommodate kitchens, food service stations and other back-of-house operations.

Further, a 55-foot truck simply could not make the turn into the space without eliminating the remainder of the retail space along this southern portion of the building. While there is sufficient room for a 30-foot truck to maneuver into this area, as shown on the truck turning diagram included with the drawings, it would be extremely difficult to accommodate a 55-foot truck and maintain useable retail space along this southern portion of 8th Street. Thus, inclusion of a 55-foot loading berth and second platform would create practical difficulties in achieving the purposes of the ARTS Overlay and the DUKE Plan and the necessary income derived from the most valuable retail space to help address the WMATA costs.

3. Lot Occupancy and Rear Yard

DDOT has set forth specific guidelines for Florida Avenue in their DUKE Plan as well as the Public Realm Design Manual issued jointly with the Office of Planning, which require a 16-foot sidewalk along Florida Avenue (10 feet unobstructed and six feet for treebox zone) and disallow any projections over the property line. These requirements have reduced the area where the most valuable rentable FAR can be achieved. In addition, HPRB has directed the Applicant to reduce the height and massing of the building along 8th Street in deference to the historic row houses to the south. This has further reduced areas where rental area can be built.

The Applicant proposes to accommodate this FAR by eliminating the rear yard and increasing the lot occupancy on some of the residential floors. Without the increase in lot occupancy and reduction of the rear yard depth, the Applicant would not be able to achieve the bonus density permitted under the Inclusionary Zoning regulations, which are designed to off-set

the developer's cost of constructing affordable housing. Recapturing the lost square footage is also critical to cover the extraordinary construction costs and unanticipated additional construction premiums associated with the WMATA constraints.

Additionally, because of the site's dual street frontages along Florida Avenue and 8th Street, the provision of a rear yard would result in a gap in the streetscape. With 8th Street as the front of the building, the rear yard would need to span the full width of the lot, from the south property line to Florida Avenue. This would result in a gap along the prominent Florida Avenue street frontage of more than 15 feet. Because of the angle of Florida Avenue, the gap along the street frontage could be as much as 25 feet. This runs directly counter to the purposes and goals of the ARTS Overlay and DUKE Plan to enliven the retail uses along the street. Changing the front of the building to Florida Avenue would have the same effect along 8th Street. A gap would be created between the proposed development and the rowhouses, which also disrupts the rhythm and character of the historic district.

It is worth noting that in other zone districts where residential density may be up to 5.0 FAR without using any bonus density, the regulations allow a flexibility to satisfy the rear yard requirements for corner properties by alternative means. For example, in the SP-1 and SP-2 Districts, a corner lot site may meet the rear yard requirement with a court, similar to the one provided with this development. 11 DCMR §§ 524.1 and 536.1. Additionally, the C-3-B District, which permits the same maximum residential density of 5.0 FAR (§771.2) and a height of 70 feet (§770.1) that is being developed here through bonus density, eliminates the need for a rear yard and allows 100 percent lot occupancy. 11 DCMR 774.9(c) and 772.1. Thus, the requested lot occupancy and rear yard relief is consistent with other zone districts that permit 5.0

FAR residential density and provide a means to accommodate it on site by allowing 100 percent lot occupancy and courts in lieu of a rear yard.

The Board has previously found that relief from the zoning provisions was necessary given the constraints of WMATA tunnels on a site in the ARTS Overlay. In BZA Case No. 16832, the Board granted relief from the lot occupancy and loading provisions to Metropolis Development Company so the retail space could be maximized in conformance with the goals of the ARTS Overlay. The site, located 2045 14th Street, N.W., was encumbered by Metrorail tunnels running directly beneath the site. The Board granted similar relief in BZA Case No. 18269 to allow an increase in lot occupancy where that site was also encumbered by Metrorail tunnels.

E. No Harm to Public Good or Zone Plan

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. With respect to the public good, the replacement of a vacant lot with a new residential building in the Florida Avenue corridor, in conformance with the DUKE Plan, will provide a significant contribution to the community.

With respect to parking and loading, the zone plan will not be compromised because the project will include sufficient parking and loading facilities that are adequate to serve the needs of the prospective residents and tenants of the new building. The site is within 2 blocks of two Metrorail Stations, U Street-Cardoza and the Shaw-Howard University stations, which provides alternative means of transportation. Fourteen car-share vehicles are also within walking distance of the site. To ensure safe vehicular and pedestrian circulation, the Applicant has agreed to implement the following transportation demand mitigation ("TDM") measures, which are set forth in the Traffic Impact Study, attached as Exhibit F:

- The Applicant will comply with zoning requirements to provide bicycle parking/storage facilities;
- The Applicant will commit that all parking costs be unbundled from the cost of lease or purchase. Parking costs must be set at no less than the charges of the lowest fee garage located within ¼ mile;
- The Applicant will identify a project's TDM Leader (for planning, construction, and operations), and provide DDOT/Zoning Enforcement with annual TDM Leader contact updates.
- The Applicant will post all TDM commitments on-line, publicize availability, and allow the public to see what commitments have been promised.
- The Applicant will provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites.
- The Applicant will provide an on-site business center to residents with access to copier, fax, and internet services.
- The Applicant will install a Transportation Information Center Display (kiosk) within the residential lobbies containing printed materials related to local transportation alternatives, and maintain a stock of materials at all times.
- The Applicant will provide secured bicycle parking/storage facilities.
- The Applicant agrees to host a transportation mobility fair six months after both the residential buildings have opened. The transportation fair will be advertised to all residents and retail workers. The onsite TDM coordinator will work with DDOT's goDCgo team to organize representatives that are experts in the non-auto transportation options that serve the site. Each person that attends the event will be educated on the various options and representatives will work with attendees to help them tailor the use of non-auto options to their specific transportation needs. Based on the turnout of the transportation fair and feedback gleaned by the onsite TDM coordinator, a determination will be made if the event will be repeated the following year.

The Applicant will also install either a Capital Bikeshare station or a new traffic signal at 8th Street and Florida Avenue.

With respect to rear yard and lot occupancy, the closed court at the rear of the property will provide adequate light and air to surrounding properties. The relief is consistent with other zone districts that allow 5.0 FAR as a matter of right for residential uses and which also provide

a means of spreading the density across the site through 100 percent lot occupancy and the provision of a court in lieu rear yard.

VI. Community Outreach

The Applicant undertook an extensive community outreach program beginning in early November 2011, which addressed this site, the Applicant's development parcel to the west, the alley closing on the west parcel and HPRB design review of both parcels. The Applicant had 15 meetings between November 2011 and June 2012 with the Design Review Committee of Advisory Neighborhood Commission ("ANC") 1B, the full ANC, the U Street Neighborhood Association, the Westminster Neighborhood Association and several individual property owners along 9th Street. A list of community meetings is included as Exhibit G. At its duly noticed and regularly scheduled meeting of June 7, 2011, ANC 1B voted unanimously to support this application. A copy of the ANC 1B resolution supporting the project is forthcoming.

VI. Witnesses

The following witnesses may provide testimony at the Board's public hearing on the application:

1. Lauren Jezienicki, on behalf of Florida Avenue Residential, LLC (expert in real estate development)
2. John Maisto, BKV Architects (expert in architecture)
3. Erwin Andres, Gorove/Slade Associates (expert in traffic and transportation planning)
4. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP (expert in planning and zoning)

VII. Exhibits in Support of the Application

The following exhibits are attached to this statement in further support of the application:

- Exhibit A: Portion of the Zoning Map illustrating the site;
- Exhibit B: Portions of the Sanborn/Tax Maps illustrating the site;
- Exhibit C: Zoning Administrator Letter regarding permitted FAR on site
- Exhibit D: Illustrations showing extent of WMATA tunnels and air vents
- Exhibit E: Letter from SK&A Engineers regarding WMATA construction constraints
- Exhibit F: Traffic Impact Study prepared by Gorove/Slade
- Exhibit G: List of Community Meetings
- Exhibit H: Outlines of Witness Testimony and Resumes of Expert Witnesses
- Exhibit I: Architectural drawings

VIII.
Conclusion

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose, and integrity of the Zoning Regulations. The Applicant therefore respectfully requests that the Board grant the application.

Respectfully submitted,

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