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September 4, 2012

Via Hand Delivery

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

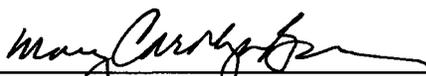
Re: BZA Case No. 18397 – Florida Avenue Residential, LLC
800 Florida Avenue, N.W. (Sq.393, Lots 41, 44, 45, 46 and 826)

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. We look forward to the Board of Zoning Adjustment's consideration of this application at the hearing on September 18, 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. 18397
EXHIBIT NO. 28

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

APPLICATION OF:)	
)	
FLORIDA AVENUE RESIDENTIAL, LLC)	BZA APPLICATION NO. 18397
)	
For area variances from the lot occupancy (§772),)	
off-street parking (§2101.1) and loading (§2201))	ANC 1B
requirements, and special exception relief)	
pursuant to section 1906, from the streetwall)	HEARING DATE:
requirements under subsection 1903.3 and the)	September 18, 2012
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)	
800 Florida Avenue, N.W. (Square 393, Lots 41,)	
44, 45, 46 and 826)¹)	

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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 lot occupancy limits of section 772, and the off-street parking and loading requirements 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 1924 8th Street, N.W. (Square 393, Lots 41, 44, 45, 46 and 826).

¹ Since the filing of the application, the address for the project has been officially changed to 1924 8th Street, N.W., Washington, D.C.

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 41, 44, 45,46 and 826 in Square 393 (“Property”) and has street frontage along Florida Avenue, 8th Street, and 9th Street, N.W., Washington, D.C. The Property measures approximately 210.4 feet along Florida Avenue, taking up the entire street frontage of the block, and extends approximately 139 feet south along 9th Street, and 194.5 feet along 8th Street, with a total land area of 32,478 square feet. A ten-foot wide alley, which runs north-south through the middle of square, bisects the development site. The north portion of the alley will be closed and re-routed to 9th Street. Portions of the zoning map and real estate plats showing the property are attached as Exhibits A and B.

The Property falls within the U Street Historic District along its northeastern-most boundary. Lot 826, fronting on 9th Street, is improved with two historic buildings (now joined internally as a single structure) that contribute to the character of the historic district. The remainder of the site is either vacant or used for surface parking since the construction of the Metrorail Green Line, whose tunnels run beneath the parcel.

2. The Vicinity

Small-scale commercial buildings are located adjacent to the Property to the south along 9th Street. Residential buildings are located to the south along 8th Street. Other retail businesses

and restaurants are located across 9th Street to the west. To the east of 8th Street is another vacant parcel controlled by the Applicant that will be developed with a companion six-story residential building with ground floor retail and service uses. The Board recently granted the Applicant zoning relief for that project in BZA Case No. 18375 at the Board's public meeting on July 24, 2012.

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.

C. Description of Proposed Development

The Applicant proposes to construct a new six-story residential building with ground floor retail on the property. The main lobby entrance to the residential building will front on 8th Street, with retail spaces lining the ground floor along Florida Avenue, 8th Street and 9th 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. The 9th Street sidewalk is also narrow, with a clear width of only 6.5 feet in some segments where the tree boxes are seven feet in width. In contrast, the 8th Street sidewalk is much wider, with a clear width of 30 feet in most locations. 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).

The project includes an upgraded alley configuration to serve the new building and enhance overall access to the interior of the square. The current north-south alley is substandard with a width of only ten feet. Because of utility poles that line the alley, the effective width is only

eight feet. Due to its narrowness, trash collection vehicles do not use the alley but instead idle on Florida Avenue and the trash receptables are brought to the truck.

The new alley configuration will greatly improve service access to the north half of the square. The portion of the alley to be closed will be re-routed to 9th Street and widened to 20-feet with the dedication of an access easement. A portion of the north-south alley will be widened to an effective width of 20 feet, as well. The Applicant will dedicate five feet of its Property as an access easement and another five feet will be provided through a building set back along the alley. The proposed alley closing and new access easements are shown on drawings included with this prehearing statement.

In order to accommodate the new alley configuration and simultaneously maintain a cohesive setting along the streetscape, the Applicant will relocate the historic buildings on Lot 826 (1933-35 9th Street) approximately 48 feet to the south. The Historic Preservation Review Board (“HPRB”) reviewed the reconfigured alley, the relocation of the historic buildings and design of the proposed new building on March 22, May 31, 2012, and July 26, 2012, and has recommended approval in concept of all elements of the project.

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 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 C" is located at the south part of the roof, while "Stair A" is situated at the west 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 the elevator penthouse, which is located approximately 12 feet, 8 inches, from the closest exterior wall along the alley where a distance of 15 feet, 8 inches, 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 the elevator penthouse an additional three feet, it would result in awkward corridors and 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. The elevator penthouse is set back significantly from the street elevations and adjacent properties, 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 received conceptual approval for the retail entrance design, but requests flexibility from BZA to make adjustments to the exterior design, including the ground floor retail setbacks, as the project is refined through the building permit application process.

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 the elevator penthouse 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 elevator penthouse has been limited to 15 feet, 8

inches, 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. The elevator penthouse is also amply set back from the street elevations and adjacent properties 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 157 residential units, the Applicant must provide 53 spaces (one for every three units). The retail space, at 20,238 square feet of gross floor area, generates a requirement of 23 spaces (in excess of 3000 square feet, one space for every 750 square feet). The total parking space requirement for the site is 76 spaces whereas the Applicant proposes to provide a total of 72 parking spaces, all of which will be devoted to residential uses and none of which will be allocated for retail uses.²

² 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.

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 two 30-foot loading berths, two 100 square foot platform, and one 20-foot loading space. The Applicant proposes to eliminate the 55-foot residential berth and one 30-foot berth, and proposes to share the remaining 30-foot berth between the residential and retail uses. Additionally, the Applicant also proposes to eliminate the 100 square-foot retail platforms 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 87 percent coverage on the second floor and 83.7 percent coverage on floors 3 and 4. No relief is required on the 5th or 6th floor, which have lot occupancies of 79 percent and 76.6 percent, respectively.

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 irregularly shaped due to the confluence of a diagonal avenue (Florida) with north-south streets (8th and 9th Streets), which affects the layout and configuration of the retail and residential units. The east portion of the site is also twice as deep as the west portion, further limiting the building floor plate. Second, the alley system is being reconfigured and widened to enhance emergency vehicle access. However, the easements and setbacks required to accommodate the widened access area places additional constraints on the site. Third, 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. Fourth, the two contributing historic structures (now a single building for zoning purposes) on the site must be incorporated into the design, which also limits and constrains the floor plate of the building. Finally, 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 have perhaps the greatest impact on the site. The tunnels and WMATA "zone of influence" span the full width of the Florida Avenue frontage for a depth of approximately 30 feet into the site. As the tunnels curve toward 8th Street, the "zone of influence" extends 60 feet into the site along 8th Street. The tunnels are located a depth of approximately 27 feet below the surface. 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 soil nail and shotcrete 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 constructed 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 C).

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 for the purchase of the WMATA land 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 among 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 as a significant added expense.

D. Resulting Practical Difficulty

1. Design Implications of WMATA Tunnels

The shallow depth of the WMATA tunnels not only limit the Applicant's ability to excavate another level of below-grade parking, it also limits the ability to put service elements, including loading facilities, in below grade space. The one below-grade level must be used primarily for parking, which leaves little room for other service space. That results in significantly more ground floor space being devoted to building-function space and less room for the most valuable retail/services uses required and promoted by the ARTS Overlay. The widening of the sidewalk at Florida Avenue also reduces the amount of ground floor retail space. The irregularly shaped lot also restricts use of the ground floor. The amount of valuable retail square footage lost is approximately 1,384 square feet. The historic buildings on the site and HPRB design constraints have also limited the placement of square footage on the site. In order to recoup the loss of valuable retail space, the Applicant is increasing the square footage on the second level to 87.3%, and on floors 3-4 to 83.7%. (The upper two floors comply with the lot occupancy limitations.) This results in an increase of approximately 4772 square feet of residential space, which is less valuable and only helps make up for a portion of the lost revenue. Retail space in this neighborhood is expected to command rental rates of approximately \$4.00/sf per month, while residential rates generate approximately \$2.24/sf per month. That represents a net loss of approximately \$2,700/month, even with the increase in lot occupancy. The rate of return for residential units would be even lower if the Applicant were required to comply with the 80% lot occupancy limit, because the unit mix and layout would likely command lower rents.

The efforts to recapture lost rentable area, as noted above, do not bring the project over its 5.0 FAR allowance; the requested lot occupancy variances allow the project to preserve as much of its allotted density as possible, and even with the requested relief, the project is still well under its designated density maximum for this location.

2. *Cost Implications of the WMATA Tunnels*

This "re-balancing" of square footage through lot occupancy relief is critical for the project's success given the additional construction costs imposed by WMATA constraints. As previously noted, there is a 150% premium for the specialty construction methods and materials required by WMATA. The redistribution of the square footage from the ground floor to the upper floors, with a commensurate increase in lot occupancy, helps sustain the return of 20% on costs demanded by investors. Here, if the Applicant were required to meet the 80% lot occupancy on the upper floors, the project would generate a return of less than 11%, which makes the project unviable for investors and financiers.

3. *Inefficient and Reduced Unit Count*

If the Applicant were required to meet the 80% lot occupancy requirement, it would result in inefficient layouts and a reduced unit count, in contravention of the District's housing goals and inclusionary zoning (IZ) regulations. In order to maintain a continuous building wall along the street frontages, the only place to accommodate open areas on the lot is at the rear of the building. However, by narrowing the portion of the building along Florida Avenue, numerous one bedroom units would need to be converted to studios, as shown on Exhibit D. This dramatically affects the number of residents that could be served by this development. Additionally, the elevator core would need to be shifted to the north, which would negatively affect the garage layout and result in inefficient and wasted retail space on the ground floor.

4. *Practical Difficulties: Parking*

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, storage and a bike room. 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.

5. *Practical Difficulties: 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 platforms, 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 9th Street, at the interior of the site. If the Applicant were required to provide a 55-foot loading berth and second platform, the size of the Florida Avenue retail space would be reduced significantly, 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.

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 in conjunction with its project approved under BZA Case No. 18375, and as described in the Applicant's Traffic Report attached as Exhibit E:

- 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.
- Installation of a new traffic signal at 8th Street and Florida Avenue.

With respect to the lot occupancy, the open court at 9th Street above the access easement and the interior alley 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 F. At its duly noticed and regularly scheduled meeting of August 2, 2011, ANC 1B voted unanimously to support this application. A copy of the ANC 1B resolution supporting the project is attached as Exhibit G.

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
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: Letter from SK&A Engineers regarding WMATA construction constraints
- Exhibit D: Loss of One-Bedroom Units without Lot Occupancy Relief
- Exhibit E: Traffic Impact Study prepared by Gorove/Slade
- Exhibit F: List of Community Meetings
- Exhibit G: ANC 1B Letter of Support
- Exhibit H: Outlines of Witness Testimony and Resumes of Expert Witnesses
- Exhibit I: Architectural drawings

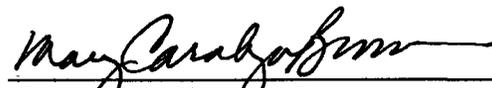
VIII.
Conclusion

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,

HOLLAND & KNIGHT LLP

By:



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