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December 31, 2013

Lloyd Jordan, Chairperson  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW  
Suite 210S  
Washington, DC 20001

**Re: Application No. 18688 – 1348-1356 Florida Avenue NE**  
**Prehearing Statement of the Applicant**

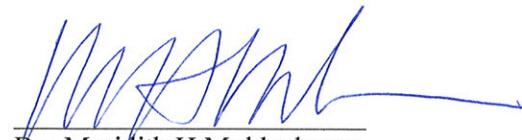
Chairperson Lloyd Jordan and Honorable Members of the Board:

On behalf of the Applicant, Lock 7 Development, LLC, enclosed please find the Prehearing Statement for the above-referenced application. The application is scheduled to be heard before the Board of Zoning Adjustment on January 14, 2014.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,  
MOLDENHAUER & WIGGINS, LLP



By: Meridith H Moldenhauer

Enclosures:

Cc: Advisory Neighborhood Commission 5D  
c/o Kathy Henderson, Chair (via email)  
Single Member District 5D06 Representative, Tina Laskaris (via email)  
Elisa Vitale, Office of Planning (via email)  
Cliff Moy, Board of Zoning Adjustment (via email)

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## Executive Summary

Case No. 18688

### Site Description

Address: 1348-1356 Florida Ave., NE

Square: 4068

Lots: 116, 147, 146, 145, and 144

Zoning: C-2-A

Existing: 1 story commercial

Historic District: None

Public Transportation:

- Metro:
  - Union Station
  - NOMA-Galludet
- Metrobus:
  - Routes: X3, D3, D4, D8 X1, X2, X3, X9 and B2
  - Stops: Fla Ave & Trinidad Ave, NE; Benning Rd and 15<sup>th</sup> St, NE
- Capital Bikeshare:
  - 13<sup>th</sup> & H (27 docks)
  - Baldensburg & Benning Rd (14 docks)
- Car Sharing:
  - Zipcar: 5 spaces
  - Car2Go
- DC Streetcar (Forthcoming)

Cases:

- *Gilmartin v. D.C. BZA*
- *1700 Block of N St. v. D.C. BZA*

### Project Description

<u>Applicant</u>	Lock 7 Development, LLC
<u>Proposal</u>	49-unit Residential Building with Corner Retail
<u>Relief Sought</u>	Height (§770); FAR (§771); and Parking (§2101.1)
<u>Variance Standard</u>	<p><b>Exceptional Circumstance:</b> Confluence of Factors</p> <ul style="list-style-type: none"><li>• Building restriction line along Orren Street</li><li>• Proximity to fire station</li><li>• Environmental degradation due to prior use</li><li>• Proposed Extension HS-Arts Overlay</li><li>• Preservation of the existing façade</li><li>• Installation of 14 foot floor-to-ceiling height</li><li>• Proximity to the “Starburst” Intersection</li></ul> <p><b>Strict Application Results in Practical Difficulty:</b></p> <ul style="list-style-type: none"><li>• Building restriction line occupies over 1200 sf</li><li>• Proximity to fire station requires costly remedies and impacts marketability of residential and retail space</li><li>• Contamination requires costly handling and disposal</li><li>• Strict application prevents compliance with the desired extension of HS-Arts overlay</li><li>• Unable to utilize IZ bonus density</li></ul> <p><b>No Detriment to Public Good:</b></p> <ul style="list-style-type: none"><li>• Replaces underutilized space with much needed residential and retail space</li><li>• Remediates environmental degradation</li><li>• If applied, project is compliant with HS-Arts overlay extension and proposed ZRR parking provision</li></ul>

### Comments of District Agencies and Community:

- Unanimous support from ANC 5D
- Letter of Support from Trinidad Neighborhood Association
- 11 Letters of Support from Neighbors (including adjacent owner)

BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

APPLICATION OF  
LOCK 7 DEVELOPMENT, LLC

BZA APPLICATION NO. 18688  
HEARING DATE: JANUARY 14, 2014

**PREHEARING STATEMENT OF THE APPLICANT**

**I. NATURE OF RELIEF SOUGHT**

This statement is submitted on behalf of Lock 7 Development, LLC (the “Applicant”), the contract purchaser of properties located at 1348-1356 Florida Avenue NE (Lots 0116, 0147, 0146, 0145, and 0144, Square 4068) (the “Property”) in support of its application for area variances from the height requirement (§770), FAR requirement (§771) and parking requirement (§2101.1) to allow the Applicant to develop a mixed use residential structure with ground floor retail in the C-2-A District.

**II. EXHIBITS IN SUPPORT OF THE APPLICATION**

**Exhibit A: Architectural Rendering**  
**Exhibit B: ICOR, Ltd Letter**  
**Exhibit C: Revised Form 135**  
**Exhibit D: NCD Management Proposal Letter**  
**Exhibit E: Gorove/Slade Report**  
**Exhibit F: TNA Letter of Support**  
**Exhibit G: Neighbor Letters in Support**  
**Exhibit H: Outline of Testimony of Erwin Andres from Gorove/Slade**

**III. APPLICANT MEETS BURDEN OF PROOF FOR VARIANCE RELIEF**

The Board is authorized to grant an area variance where it finds that the Applicant fulfills the three-prong area variance standard. As described in the Initial Application, supplemented in this Prehearing Statement, and as will be further explained at the public hearing, all three prongs of the area variance test are satisfied. There are no changes to the plans submitted in the Initial Application but find attached a color rendering illustrating the high quality of design and materials. See Exhibit A.

**A. The Property is Unusual Because of its Size, Shape or Topography and is Affected by an Exceptional Situation or Condition.**

The phrase “exceptional situation or condition” in the variance test applies not only to the land, but also to the existence and configuration of a building on the land and other events extraneous to the land itself. *See Oakland Condominium v. District of Columbia Bd of Zoning Adjustment*, 22 A.3d 748 (D.C. 2011) (Holding that an exceptional situation existed because an applicant before the Board of Zoning Adjustment seeking a variance from the zoning code demonstrated good faith, detrimental reliance on actions the actions of city officials, namely the issuance of a building permit by the Department of Consumer and Regulatory Affairs, in believing that they were acting in accordance with the zoning regulations); *See also Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974)(Holding that an exceptional situation existed because of the failure of a seminary to remain a viable institution). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

As described in the initial submission, the Property is unusual and affected by an exceptional situation and condition as a result of a confluence of the following factors: (1) the Property is subject to a 10-foot building restriction line along Orren Street; (2) the proximity of the Property to the nearby fire station; (3) the prior use of the Property requires environmental remediation; (4) preservation of the existing façade as encouraged by the HS-Arts Overlay; (5) the proximity of the Property to the HS-Arts Overlay and inclusion in extension of the Overlay; and (6) the location of the Property relative to the “Starburst” Intersection at H Street NE and Benning Road.

**B. Strict Application of the Zoning Regulations would Result in Practical Difficulty**

Strict application of the Zoning Regulations with respect to the height requirement (§770), FAR requirement (§771) and parking requirement (§2101.1) would result in a practical difficulty to the Applicant.

### *1. Height Requirement (§770)*

Under §770, the maximum height in the C-2-A district is 50 feet, with no limitation on the number of stories. The proposed structure is 55 feet. Thus, the Applicant is seeking zoning relief with respect to height for an additional 5 feet of height. The need for 5 feet of height relief is a direct result of the unique history and challenges at the Property. First, the 10 foot building restriction line along Orren Street occupies over 1200 square feet of the Property. This is Property that was purchased by the Applicant, on which the Applicant is paying property tax, but is not permitted to put any portion of the structure or devote the space to parking spaces. Second, the proximity of the Property to the fire station, recognized as being the busiest in the District for many years, presents problems associated with excessive noise and lighting as well as safety issues from engines coming in and out of the station at all hours of the day and night. The noise, lighting, and safety concerns require costly features, such as sound proof windows which greatly impact the marketability of the residential units, particularly those facing the fire station. Third, the environmental analysis at the Property revealed contamination by petroleum and other hazardous materials.

The contamination is the result of years of vehicle storage and laundry services releasing chemicals into the soil. As indicated by the Environmental Subsurface Investigation, conducted by ICOR Ltd., the petroleum impacted soil and presence of hazardous materials will require special handling and proper disposal and treatment at a permitted facility. *See* ICOR Letter at Exhibit B. Primary costs include excavation, transportation, and disposal of petroleum impacted soil; abatement of asbestos, light tubes, ASTs, and ballasts; and installation of a vapor venting system and barrier installation.

The additional 5 feet in height, in conjunction with the FAR relief discussed below, allow the Applicant to adjust the massing and provide additional square footage to limit the detrimental effects of the proximity to the fire station and offset the costs associated with unique challenges at the Property. Furthermore, the Applicant is providing the 14-foot floor-to-ceiling height required in the HS-Arts Overlay. Recognizing that a 14 foot floor-to-ceiling height on the first floor is roughly 5 feet taller than

would ordinarily be provided, the HS-Arts overlay, if applied, provides a corresponding 5 foot height bonus to offset the benefit of the higher first floor retail bays.

## *2. FAR Requirement (§771)*

Under §771, the total FAR permitted is 3.0 FAR, with up to 1.5 FAR being devoted to nonresidential use. While well under the 1.5 FAR commercial requirement, the proposed structure has a total FAR of 3.5. Thus, the Applicant is seeking zoning relief with respect to total FAR for only an additional 0.5 FAR.<sup>1</sup> The need for FAR relief is a direct result of the need to adjust the massing and provide additional square footage to offset the impacts of the unique challenges associated with the Property discussed above, including the building restriction line, proximity to the fire station, and environmental condition. Furthermore, the Applicant is preserving the original façade of the existing structures. As an incentive for fulfilling one of its key priorities, the HS-Arts overlay provides 0.5 FAR in bonus density in exchange for preservation of existing façades.

## *3. Parking Requirement (§2101.1)*

Pursuant to §2101.1, the residential parking requirement for an apartment use in the C-2-A District is 1 space for every 2 dwelling units. The proposed structure has 49 dwelling units. Thus, the parking requirement is 25 parking spaces.<sup>2</sup> The Applicant is providing 8 parking spaces. Thus the Applicant is seeking parking relief for the remaining 17 spaces.

In addition to the physical limitation to parking, a one-story underground parking garage would also create practical difficulty for the Applicant as a result of its inefficiency and cost. The Court of Appeals affirmed the Board's approval of 100% parking relief for construction of a YMCA on a vacant lot based on a finding of practical difficulty due to the need to reduce the size of the swimming pool by

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<sup>1</sup> The requested total FAR relief is 0.5 FAR rather than 1.0 FAR reflected in the Initial Application. A revised Form 135 has been included to correct the Initial Application, which inadvertently indicated that the total FAR permitted is 2.5 FAR rather than 3.0 FAR. See Exhibit C.

<sup>2</sup> Because the retail portion of the project is less than 3,000 square feet, there is no retail parking requirement at the Property.

half to provide parking at grade and the exorbitant cost of providing underground parking in comparison to such costs under ordinary circumstances. *See 1700 Block of N Street, N.W., et. al. v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 676 (D.C. 1978); *see also Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170-71 (D.C. 1990) (“. . . 1700 Block indicates that at some point economic harm becomes sufficient, at least when coupled with a significant limitation on the utility of the structure.”).

A similar economic hardship related to parking is present at the subject Property. The parking cannot be provided at grade without substantially limiting the number of market rate and affordable units and at the expense of the secure, covered bicycle parking spaces. Furthermore, the Applicant would be unable to use the bonus density available through the District’s Inclusionary Zoning program, designed to offset the additional costs associated with providing affordable housing. Once the width of a two-way ramp and required drive aisles are provided, the limited number of spaces that could be provided at the Property would be substantially more expensive than is ordinarily the case, especially considering additional the costs associated with contaminated soil, dewatering and stabilization measures. *See NCD Management Proposal Letter at Exhibit D*. These additional costs and inefficiency associated with building underground parking at the Property to meet the parking requirement substantially increases the ultimate rental or sales costs to residents.

### **C. No Detriment to Public Good or Inconsistency with Zone Plan**

Granting the variance relief requested would not impair the intent, purpose, and integrity of the zone plan. There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief. The proposed project replaces an underutilized space with a much needed residential use and corner retail. The new mixed-use development will significantly contribute to the vibrancy of the neighborhood while supporting the District’s vision for this area. Moreover, the additional residential units help address the well documented

shortage of housing in the Washington D.C. area.<sup>3</sup> Furthermore, as the result of two upcoming changes to the zoning at the Property, namely the extension of the HS-Arts Overlay and completion of the ZRR, the proposed structure will likely be permitted as a matter of right in the very near future.

Extension of the HS-Arts Overlay to the Property would permit the Height and FAR as a matter of right. Section 2412.9a of the Comprehensive Plan prioritizes extending the HS-Arts Overlay to “... promot[e] development of an arts district along the eastern end of Florida Avenue NE by considering linkages with the H Street NE arts and entertainment district and planned development on lower Bladensburg Road, support of additional development on the corridor, and support of visual improvements.” 10 DCMR 2412.9a. In fact, as the result of an exchange between the Applicant, the SMD, and OP, the Applicant reasonably believed that the H Street Arts overlay had already been extended to include the Property prior to entering into a binding contract. The new parking provisions in the ZRR, if passed in its most current form, would permit the parking provided by the project as a matter of right. With the completion of the final round of public input in November 2013, the revised zoning code is in the final stages of approval.

### *1. Height (§770)*

The minimal height relief of 5 feet will have little, if any, impact on the surrounding neighborhood. Furthermore, the height relief requested will effectuate the goals of the HS-Arts Overlay. With respect to height, structures in the HS-Arts Overlay with frontage on Florida Avenue, NE are subject to a uniform minimum clear floor-to-ceiling height of 14 feet and are entitled to an additional 5 feet of building height under §1324.13. Thus, if the project were located in the HS-Arts Overlay the permitted height would be 55 feet and no relief would be required.

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<sup>3</sup> Over the next 20 years the Washington metropolitan area will need 700,000 new housing units by 2030, or roughly 36,500 each year to keep up with predicted population growth. However, if the pace of construction over the last 20 years continues, at roughly 28,000 new housing units per year, the region would only add about  $\frac{3}{4}$  that much. Artemel, Agnes and Sturtevan, Lisa. *Washington's Economic Future Depends on More Housing*. October 17, 2012. Greater Greater Washington. Found at: <http://greatergreaterwashington.org/post/16470/washingtons-economic-future-depends-on-more-housing/>.

## 2. *FAR (§771)*

The additional FAR of 0.5 will have little to no impact on the surrounding neighborhood. Within one block of the Property is the Starburst Intersection with several high density residential projects. Furthermore, as a result of the preservation of the existing façade and IZ bonus, no relief would be required with respect to FAR if the HS-Arts overlay is extended as supported by the ANC. Under §1324.3, new construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses. In addition, under §1326.3, developments subject to the IZ requirement are eligible for an additional FAR bonus of 0.5 FAR. Thus, if the project were located in the HS-Arts Overlay the permitted FAR would be 3.5 FAR and no relief would be required.

## 3. *Parking (§2101.1)*

Gorove/Slade conducted and prepared a technical memorandum assessing the effect the parking and loading for the project would have on the local neighborhood. Gorove/Slade concluded that the no parking will likely be necessary to supply the site because the site is located near ample transit services coupled with an aggressive TDM plan. They also concluded that it is not likely that the development will cause any detrimental impact to on street parking conditions. *See Gorove/Slade Report at Exhibit E.*

All residents and patrons of the retail establishments will be well accommodated by the combination of the proposed bicycle parking spaces, Metrobus routes, and forthcoming DC Streetcar. A large percentage of trips in this transit oriented location are made by Metrorail, Metrobus, bicycle, or on foot. The Property's proximity to public transportation is exceptional. As stated, the Property is ideal for walkers and is well serviced by a number of public transportation facilities and services including Metro; Metrobus routes; Capital Bikeshare; Car2Go; Zipcar; and other carsharing options; and the forthcoming DC Streetcar. Note that under the draft of the ZRR, which is now in the final stages of approval, the

parking requirement would be 8 spaces and, by special exception approved by the BZA, could be reduced to 0 spaces.<sup>4</sup>

The availability of a variety of transportation options reduces the incentive to own and store a vehicle on the premises and minimizes spillover parking in the neighborhood. According to a December 2013 report by the U.S. Public Interest Research Group, between 2000 and 2011 the proportion of workers in D.C. commuting by private car declined by 4.7%, which is the second largest decline in the country for an urbanized area.<sup>5</sup> Car ownership and traffic congestion is particularly low in this area of the District as a result of the broad array of transportation alternatives for residents, visitors, and customers.

*See NeighborhoodInfoDC.*<sup>6</sup> The Property and neighborhood will have sufficient parking when the redevelopment is completed.

In addition, under the Bicycle Commuter and Parking Expansion Act of 2007, a residential building owner must provide one secure bicycle parking space for every three residential units. In this instance, the 49 residential units would require 16 bicycle spaces. The Applicant has provided 36 secure, covered bicycle parking spaces, which is 20 more than required.

Furthermore, the Applicant intends to implement the following mitigation measures to promote the use of alternative modes of transportation and limit any potential negative impacts as a result of the parking relief requested:

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<sup>4</sup> Under 1901.5, the parking requirement would ordinarily be 15 spaces. (Residential: 1 space for every 3 dwelling units in excess of 4 units. 49 units – 4 units = 45 units; 45 units. 1 space/3du = 15 spaces Commercial: 1.33 spaces for every 1000 square feet in excess of 3000 square feet. 1161.19 square feet of retail proposed = 0 spaces). Under 1902.1, the parking requirement would be reduced to 8 spaces. (The 15 spaces ordinarily required is reduced by 50% for any site located within  $\frac{1}{4}$  mile (1312.5 ft) of a streetcar line that is in operation or for which a construction contract has been awarded. The Property is roughly 300 feet from H Street and 400 or so feet from the nearest proposed street car stop so well within  $\frac{1}{4}$  mile. Thus the requirement is 7.5 which rounds to 8.). Under 1903, the parking requirement can be reduced to 0 spaces by special exception, if certain conditions regarding impacts on the community are met.

<sup>5</sup> Davis, Benjamin; Baxandall, Phineas. U.S. Public Interest Research Group. *Transportation in Transition: A Look at Changing Travel Patterns in America's Biggest Cities*. December 2013.

<sup>6</sup> Finding that between 2007-11, only 50 % of households had a car, compared to a District average of 64%. [http://neighborhoodinfodc.org/anc12/Nbr\\_prof\\_anccb24.html#sec\\_2\\_isolat](http://neighborhoodinfodc.org/anc12/Nbr_prof_anccb24.html#sec_2_isolat).

- Restrict 17 tenants from obtaining a Residential Parking Permit (RPP)<sup>7</sup> to offset the 17 spaces of parking relief sought;
- Install an electronic information display providing real time information related to local transportation options;
- Provide the first occupant of each residential unit a \$100 car sharing membership, or a \$150 Capital Bikeshare membership, or a \$200 *Smart Trip* card;
- Designate a member of the property management team as the Transportation Management Coordinator (TMC) to ensure that information identifying programs and incentives for using alternative modes of transportation is disseminated to tenants of the building; and
- Provide at least 30 covered and secure bicycle spaces in the building.

For these reasons, approval of the zoning relief requested will not cause a detriment to the public good or zone plan.

#### **IV. COMMUNITY OUTREACH**

Following the submission of the Initial Application, the Applicant has conducted extensive neighborhood outreach. On November 18, the Applicant presented at the SMD 5D06 community meeting. The Applicant also met with Fire Marshall on Monday November 18 to obtain feedback and received positive remarks. On November 26, the Applicant presented to the Trinidad Neighborhood Association meeting and subsequently received a Letter of Support. *See* TNA Letter of Support at Exhibit F. On December 17, the Applicant received unanimous support from ANC 5D and was commended by the SMD for their exceptional communication and willingness to work with the community. The Applicant has obtained 12 letters in support of the Application including a letter from the one adjacent neighbor. *See* Neighbor Letters of Support at Exhibit G.

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#### **V. WITNESSES**

The following witnesses will appear on behalf of the Applicant:

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<sup>7</sup> Councilmember Tommy Wells has introduced the Neighborhood Parking Protection Act of 2013 to codify an owner's ability to request that the Mayor designate a property as ineligible to obtain residential parking permits.

1. David Gorman, Principal on behalf of Lock 7.
2. Patrick Conway, Principal on behalf of Lock 7.
3. Ron Schneck, Architect on behalf of Square134 Architects.
4. Erwin Andres, Traffic Engineer on behalf of Gorove/Slade as an Expert Witness.

## VI. CONCLUSION

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings in this case, we hereby submit that the application meets the requirements for area variance relief. We look forward to presenting our case to the Board on January 14, 2014.

Sincerely,

GRiffin, MURPHY,  
MOLDENHAUER & WIGGINS, LLP



By: Meridith H Moldenhauer