

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

**APPLICATION OF
LOCK 7 DEVELOPMENT, LLC**

**1348-1356 FLORIDA AVENUE, NE
ANC 5D**

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 property located at 1348-1356 Florida Avenue NE, Lots 0116, 0147, 0146, 0145 and 0144 in Square 4068 (the "Property"), in support of its application for an area variance 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. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board" or "BZA") has jurisdiction to grant the variance relief requested herein pursuant to §3103.2 of the Zoning Regulations.

III. BACKGROUND

A. Background Information Regarding the Property

The Property, also known as Lots 0116, 0147, 0146, 0145, and 0144 in Square 4068, contains approximately 11,180 square feet of land area and is located in Northeast Washington, D.C. The Property is located 1.2 miles from the Noma-Galludet Metro Station and 1.4 miles from the Union Station Metro. The Property is located steps from the first leg of the proposed DC Streetcar. The Property has approximately 90 feet of frontage along Florida Avenue NE and 124 feet of frontage along Orren Street NE. The Property is presently improved with a number of one and two-story structures including an art store and an office and warehouse for a plumbing company. Also on the property is a gravel covered yard that is being used to store the plumbing company's construction equipment and vehicles. The Property is

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not located within any historic District, and the existing buildings are not listed on the D.C. Inventory of Historic Sites.

B. Description of the Improvements in the Surrounding Area

Square 4068 is bounded by Florida Avenue NE to the south, Morse Street to the north, Trinidad Avenue to the west, and Bladensburg Road NE to the east. See Baist Atlas Map at Tab 8. The Property is located at the eastern end of the H Street Corridor. Square 4068 is split-zoned. Along Florida Avenue NE, the Square is the C-2-A, C-3-A, and C-2-C Districts. The northern portion is in the R-4 District. See Zoning Map at Tab 9. The Square is occupied by a number of uses and includes the mixed use Delta Towers, a BP gas station, corner grocery stores, a fire station, and others. Also on the Square are attached and detached single family homes, flats, and apartments. A block south are a number of well-known H Street Corridor establishments including Star and Shamrock, Pho Bar & Grill, Dangerously Delicious Pies, H Street Coffee House and Café, and the recently opened Red Rocks Neapolitan Bistro.

C. Description of the Traffic Conditions and Mass Transit Options in the Surrounding Area

The Property is well serviced by a number of public transportation facilities and services including Metro, Metrobus routes, Capital Bikeshare, and Zipcars. The DC Streetcar, which is expected to be carrying passengers by the end of 2013, will greatly enhance the walkability, bikeability, and public transportation available at the Property. DC Streetcar stops are proposed at 13th Street & Benning Road and 15th Street & Benning Road , both just 2 blocks from the Property. The Property is located approximately 1.2 miles from the Noma-Galludet Metro Station and 1.4 miles from the Union Station Metro. Moreover, Metrobus routes X3, D3, D4, and D8 stop at the intersection of Florida Avenue & Trinidad Avenue NE. Metrobus routes X1, X2, X3, X9 and B2 stop at the intersection of Benning Road and 15th Street NE. In addition, the Property is within close proximity to a number of the District's bikesharing and carsharing programs. Capital Bikeshare stations are located at 13th & H Street NE (27

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docks) and Bladensburg Road & Benning Road NE (14 docks). Five Zipcar spaces are located within walking distance including cars at 12th/H Street NE, behind 817 11th Street NE, behind 614 Elliott Street NE, 1600 Maryland Avenue NE, and at Galludet University. Another local car-sharing program, Car2Go, reported in July 2013 that the use of the company's car-sharing service in the District had reached over 25,000 and that the fleet was expanded from 300 vehicles to 400 vehicles to accommodate increasing demand. Walkscore.com labels the property as "very walkable."

D. Description of the Proposed Development

As shown on the architectural plans, *see* Architectural Plans and Elevations at Tab 10, the Applicant proposes to convert the Property from a number of commercial, warehouse, and grave yard equipment storage uses to a 5-story mixed use residential building with retail at the corner of Florida Avenue and Orren Street NE. While just steps away from the HS-Arts Overlay (the "Overlay"), the Applicant's design is in conformity with the Overlay. Specifically, the Applicant is complying with the floor-to-ceiling height requirement of the HS-Arts Overlay and is effectuating a primary goal of the Overlay by preserving the existing façade. The first floor will contain 5 residential units, 4 two-bedroom units and 1 one-bedroom unit, and one retail space on the corner of Florida Avenue and Orren Street NE. Floors two through five will contain 11 units each: 1 studio, 7 one-bedroom units, and 3 two-bedroom units. In total, the structure will have 49 residential units and 8 parking spaces on the ground floor. The first floor will also have secure, covered bike storage for 36 bicycles. The Applicant will also be providing affordable dwelling units through the District's Inclusionary Zoning program.

IV. NATURE OF RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is required the height requirement (§770), FAR requirement (§771) and parking requirement (§2101.1). Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

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- (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (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 zone plan as embodied in the Zoning Regulations and Map.

See 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 839 (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. District of Columbia 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. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

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

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator*,

Inc. v. District of Columbia Bd. of Zoning Adjustment, 320 A.2d 291, 294 (D.C. 1974). 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).

The Property is characterized 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 HS-Arts Overlay; and (6) the location of the Property relative to the “Starburst” Intersection at H Street NE and Benning Road.

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1. Building Restriction Line

The western portion of the lot line is restricted by a 10-foot building restriction line. The building restriction line is along the 124.22 foot frontage along Orren Street NW. As a result, 1,240 square feet of the lot are unbuildable. No part of the building and no parking spaces are permitted to be located within this area. See, 11 DCMR § 199.1 (“Line, building - a line beyond which property owners have no legal right to extend a building or any part of a building . . . applied to building restriction lines, when recorded on the records of the Surveyor of the District of Columbia”) and 11 DCMR §2116.4. The impact of the non-buildable 1,240 square feet extends upward for each story, which multiplies the detrimental effect to the Applicant.

2. Proximity to the Fire Station

The Property is adjacent to the District of Columbia Fire Station at 1342 Florida Avenue NE, which houses Engine Company 10 and Truck Company 13. “Engine Company 10 has been the busiest company in the District of Columbia for many years as well as being the busiest single piece engine

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company in the United States according to Firehouse Magazines National Run Survey.”¹ The presence of such an active fire station adjacent to the Property creates an exceptional circumstance for the Property with respect to the substantial noise, additional lights and other disturbances, and decreased safety as a result of large fire trucks entering and exiting quickly at all times of the day and throughout the night. As a result, the Applicant must install windows with a higher STC rating on the side of the building facing the fire station to mitigate these impacts to the extent possible and otherwise offset the impact on the marketability of the residential units.

3. Prior Uses Require Substantial Environmental Remediation

The Property is presently improved with a number of one and two-story structures including an art store, office and warehouse for a plumbing company, and gravel yard used to store the plumbing company’s construction equipment and vehicles. Historically, the Property had been used for various dry cleaning operations. Penn Valet Service operated at 1352 Florida Avenue in 1952 and Dick Lee Laundry operated at 1350 Florida Avenue from 1936 through 1954. The long term presence of dry cleaning operations on the subject site represents a recognized environmental condition (REC). As a result of the prior use, the Applicant will incur additional costs and must pay special attention to environmental remediation concerns at the Property. As indicated by the Phase I and Phase II Limited Subsurface Investigation Report, 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. 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.

¹ <http://www.10engine.com/news/index/layoutfile/home>

4. Preservation of the Existing Façade

The Applicant is preserving the existing façade on the first story. While this Property is just outside of the HS-Arts Overlay, preservation of the existing façade effectuates an important goal of the Overlay. The HS-Arts Overlay promotes the preservation of the existing facades as a way of encouraging rehabilitation that is consistent with the historic character and scale of the area and reuse of existing buildings. Pursuant to §1324.3, any new construction that preserves an existing façade construction before 1958 is permitted a 0.5 FAR bonus for residential use. Adaptive reuse of the existing façade, rather than demolishing and rebuilding, conserves resources, reduces waste, and reduces environmental harm caused by new materials being manufactured and transported to the site.

5. Proximity to HS-Arts Overlay and Inclusion in Extension of Overlay

The Applicant reasonably believed their property, at the eastern end of Florida Avenue NE, was included in the H Street Arts Overlay. After being approached by the Applicant, a member of the ANC inquired with the Office of Planning about whether the HS-Arts Overlay included the Property. OP responded via email quoting 10 DCMR §2412.9(a): Extension of H Street NE Arts District leading both the Applicant and the ANC to reasonably infer that the Property was in fact in the Overlay. Section 2412.9(a) recommends that the Overlay be extended 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 2412.9(a). Based on these correspondences and the language in the Comprehensive Plan, the Applicant detrimentally relied on a false understanding that the Property is currently located in the Overlay and conducted financial feasibility analysis, extensive architectural design, and engineering work based on that understanding.

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B. Strict Application of Zoning Regulations Would Result in Practical Difficulty to the Owner

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 building restriction line and the desire to provide a proper floor-to-ceiling height and maintain the existing façade.

The Property suffers from limitations on development of the lot as a result of the building restriction line and substantial 15-foot rear yard requirement along a 90 foot lot line. The building restriction line is along the 124.22 foot frontage along Orren Street NW. As a result, 1,240 square feet of the lot are unbuildable. The Property must also comply with the 15 foot rear yard requirement along the 90 feet of frontage at the rear of the Property. As a result, the Applicant may only occupy 70% of the lot where 75% lot occupancy is permitted as a matter of right. Due to the Applicant's inability to occupy the permitted lot occupancy, the Applicant seeks minor height relief, with a deviation of only 5 feet, to offset the reduced lot occupancy.

While just outside the boundary of the HS-Arts Overlay, the Applicant is implementing the 14 foot floor-to-ceiling height prescribed and is preserving the existing façade. As such, while the first floor could typically be 10-12 feet, the first floor of the proposed structure is 14 feet due to adaptive reuse of the façade. The additional 5 feet of height relief is necessary to offset the height than typical first story. Without such relief, the top story would be exceptionally short and would have substantial impacts on

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marketability. Compliance with the height requirement would be extremely burdensome for the Applicant and would impact its ability to preserve the façade.

2. FAR Requirement (§771)

Under §771, the total FAR permitted is 2.5 FAR, with up to 1.5 FAR being devoted to nonresidential use. The proposed structure has an FAR of 3.5. Thus, the Applicant is seeking zoning relief with respect to total FAR for an additional 1.0 FAR. The need for FAR relief is a direct result of the need to offset the impacts of the nearby fire station and the environmental remediation at the Property.

Impacts of the nearby fire station include substantial noise, additional lights and other disturbances, and decreased safety as a result of large fire trucks entering and exiting quickly at all times of the day and throughout the night. The Applicant must install windows with a higher STC rating on the side of the building facing the fire station to mitigate these impacts to the extent. The Applicant seeks FAR relief to allow additional square footage at higher elevations and on the opposite side due to the practical difficulty created by the limited marketability of the residential units immediately adjacent to the fire station, particularly on the lower levels.

In addition, the Applicant will incur substantial costs in remediating the environmental degradation at the Property due to the prior use of the Property for various dry cleaning operations. The petroleum impacted soil and presence of hazardous materials will require special handling and proper disposal and treatment at a permitted facility. The Applicant will incur substantial costs including 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. Compliance with the FAR requirement would create a practical difficulty for the Applicant as a direct result of the costs associated with the environmental remediation required at the Property.

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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.² The Applicant is providing 8 parking spaces. Thus the Applicant is seeking parking relief for the remaining 17 spaces.

Providing the required parking at grade is not feasible without a significant reduction in the footprint of the building. The development potential of the lot is already substantially limited by the building restriction line along Orren Street NE and the wide rear yard. The buildable area that remains is very narrow. The Applicant is providing as much off-street parking as is possible at grade and physically cannot add any more spaces in a way that is accessible from the rear alley. Adding more surface parking would result in a large reduction in size of the building and the loss of a substantial number of market rate and affordable dwelling units. Providing the parking at grade would also result in the elimination of bicycle parking and storage. As a result of losing much of the building, it would not be economically viable to construct anything on the Property, particularly because the resulting building would be unable to use any of the IZ bonus density available to offset the cost of providing the affordable units. Thus, strict application of the parking requirement would be a considerable burden to the Applicant by effectively preventing the construction of a residential building with the mandatory affordable units.

Similarly, providing underground parking would be extremely burdensome, if not impossible, for the Applicant. Underground parking at the facility would result in extremely inefficient parking with respect to space and costs as a result of the size and dimensions of the Property. The lot's narrow configuration prevents making a multilevel underground parking structure that could accommodate the required parking spaces, drive aisles, and access ramps unfeasible. The significant expense for

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

constructing such an extensive underground parking structure would be prohibitive and unviable for all intents and purposes.

For the reasons stated, strict application of the zoning requirements with respect to the height requirement (§770), FAR requirement (§771) and parking requirement (§2101.1) would result in a practical difficulty to the Applicant.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zoning 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 ground floor retail. The project also remediates the environmental condition at the Property, at great expense to the Applicant, to allow for residential use at the Property.

Furthermore, the project will greatly improve the area and effectuate the goals of the HS Arts Overlay by providing a 14-foot floor-to-ceiling height on the first story, preserving the existing façade and constructing market rate and affordable dwelling units. 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. As a result of the preservation of the existing façade and IZ bonus, no relief would be required with respect to FAR either if the project were located in the HS-Arts Overlay. 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

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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.

In addition, under the Bicycle Commuter and Parking Expansion Act of 2007, a residential building owner must provide on 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. Finally, the additional residential units help address the well documented shortage of housing in the Washington D.C. area.³

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

VI. CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted

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³ 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 ¾ 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/>.

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