

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JULY 10, 2012

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 11:36 a.m., Nicole Sorg, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

NICOLE SORG, Vice Chairperson  
RASHIDA MacMURRAY, Board Member  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

PAUL GOLDSTEIN

DDOT STAFF PRESENT:

LEWIS BOOKER

The transcript constitutes the Minutes from the Public Hearing held on July 10, 2012.

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1 P-R-O-C-E-E-D-I-N-G-S

2 1:18 p.m.

3 VICE CHAIRPERSON SORG: The hearing  
4 will please come to order. Good afternoon,  
5 ladies and gentlemen.

6 We are located in the Jerrily R.  
7 Kress Memorial Hearing Room at 441 4<sup>th</sup> Street,  
8 N.W.

9 This is the July 10th Public Hearing  
10 of the Board of Zoning Adjustment of the District  
11 of Columbia.

12 My name is Nicole Sorg, Vice  
13 Chairperson. Joining me today to my far right  
14 Mr. Jeffrey Hinkle representing the National  
15 Capital Planning Commission. To my right, Ms.  
16 Rashida MacMurray, Board Member and to my left  
17 representing the Zoning Commission is Chairman  
18 Anthony Hood.

19 Copies of today's hearing agenda are  
20 available to you and are located in the wall  
21 bin near the door.

22 Please be advised that this

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1 proceeding is being recorded by a court reporter  
2 and is also webcast live. Accordingly, we must  
3 ask you to refrain from any disruptive noises  
4 or actions in the hearing room.

5                   When presenting information to the  
6 Board, please turn on and speak into the  
7 microphone first stating your name and home  
8 address. When you are finished speaking,  
9 please turn your microphone off so that your  
10 microphone is no longer picking up sound or  
11 background noise.

12                   All persons planning to testify  
13 either in favor or in opposition must be sworn  
14 in by the Secretary.

15                   Also, each witness must fill out two  
16 witness cards. These card are located on the  
17 table near the door and on the witness tables.

18                   Upon coming forward to speak to the Board,  
19 please give both cards to the reporter sitting  
20 at the table to my right.

21                   If you wish to file written  
22 testimony or additional supporting documents

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1 today, please submit one original and 12 copies  
2 to the Secretary for distribution. If you do  
3 not have the requisite number of copies, you  
4 can reproduce copies on a machine in the Office  
5 of Zoning located across the hall.

6 The order of procedure for special  
7 exceptions and variances pursuant to 3113 is  
8 statement of the applicant and applicant's  
9 witnesses, reports and recommendations from the  
10 D.C. Office of Planning, reports and  
11 recommendations from other public agencies,  
12 report of the Advisory Neighborhood Commission  
13 for the area within which the property is  
14 located, parties and persons in support of the  
15 application, parties and persons in opposition  
16 to the application, rebuttal and closing  
17 statement by the applicant.

18 Pursuant to Section 3117.4 and  
19 3117.5, the following time constraints will be  
20 maintained: The applicant/appellant, persons  
21 and parties except an ANC in support including  
22 witnesses are allotted 60 minutes collectively;

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1 appellees, persons and parties except an ANC  
2 in opposition including witnesses are also  
3 allotted 60 minutes collectively; individuals  
4 in support or in opposition are allotted three  
5 minutes; organizations are allotted five  
6 minutes.

7                   These time restraints do not include  
8 cross examination and/or questions from the  
9 Board. Cross examination of witnesses by the  
10 applicant or parties is permitted.

11                  The ANC within which the property  
12 is located is automatically a party in a special  
13 exception or variance case.

14                  Nothing prohibits the Board from  
15 placing reasonable restrictions on cross  
16 examination including time limits and  
17 limitations on the scope of cross examination.

18  
19                  The record will be closed at the  
20 conclusion of each case except for any material  
21 specifically requested by the Board. The Board  
22 and the staff will specify at the end of the

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1 hearing exactly what is expected and the date  
2 when the persons must be submit the evidence  
3 to the Office of Zoning.

4                   After the record is closed, no other  
5 information will be accepted by the Board.

6                   The District of Columbia  
7 Administrative Procedure Act requires that a  
8 public hearing on each case be held in the open  
9 before the public. Pursuant to Section 405(b)  
10 and 406 of that Act, the Board may consistent  
11 with its rules of procedure and the Act enter  
12 into a closed meeting on a case for purposes  
13 of seeking legal counsel on a case pursuant to  
14 D.C. Official Code 2-575(b)(4) and/or  
15 deliberating on a case pursuant to D.C. Official  
16 Code 2-575(b)(13), but only after providing the  
17 necessary public notice and in the case of an  
18 emergency closed meeting after taking a roll  
19 call vote.

20                   The decision of the Board in  
21 contested cases must be based exclusively on  
22 the public record. To avoid any appearance to

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1 the contrary, the Board requests that persons  
2 present not engaged Members of the Board in  
3 conversation.

4                   Please turn off all beepers and cell  
5 phones at this time so as not to disturb the  
6 proceedings.

7                   Preliminary matters are those which  
8 relate to whether a case will or should be heard  
9 today such as requests for postponement, a  
10 continuance or withdrawal or whether proper and  
11 adequate notice of the hearing has been given.

12                  If you are not prepared to go forward  
13 with a case today or if you believe that the  
14 Board should not proceed, now is the time to  
15 raise such a matter.

16                  Mr. Secretary, I know we have some  
17 preliminary matters.

18                  SECRETARY MOY: Yes, we do.

19                  VICE CHAIRPERSON SORG: And I know  
20 what you're going to say.

21                  SECRETARY MOY: Yes, we do and I  
22 think I know what you're going to say.

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1                   VICE CHAIRPERSON SORG: Okay. You  
2 can go ahead and say what you're going to say.

3                   SECRETARY MOY: Okay. Well, there  
4 are some preliminary matters, but staff would  
5 suggest that the Board address those when I call  
6 the case.

7                   VICE CHAIRPERSON SORG: Excellent.

8                   We will do so and now, all individuals wishing  
9 to testify today please rise and take the oath.

10                  Mr. Secretary, would you please  
11 administer the oath?

12                  SECRETARY MOY: Do you solemnly  
13 swear or affirm that the testimony you're about  
14 to present in this proceeding is the truth, the  
15 whole truth and nothing but the truth?

16                  Ladies and gentlemen, you may  
17 consider yourself under oath.

18                  VICE CHAIRPERSON SORG: Thank you  
19 very much and let us proceed with our agenda.

20                  SECRETARY MOY: Yes. Good  
21 afternoon, Madam Chair and Members of the Board.

22                  The first of two cases for the

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1 afternoon session. The first being Application  
2 Number 18373. This is the application of Atlas  
3 District Veterinary Hospital. I'm going to  
4 read the caption as advertised. Pursuant to  
5 11 DCMR 3104.1 for special exceptions from the  
6 off-street parking requirements under Section  
7 730 and 2116.1 to establish a veterinary  
8 hospital under Section 730 in the HS/C-2-A  
9 District at premises 1326 H Street, N.E.  
10 Property located in Square 1026, Lots 86 and  
11 832.

20 VICE CHAIRPERSON SORG: Thank you  
21 very much, Mr. Secretary.

22 Would the Applicant for the Atlas

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1                   District Veterinary Hospital please come  
2                   forward and take a seat at the table?

3                   Hi.    Good afternoon.    Can you  
4                   please introduce yourselves stating your name  
5                   and address for the record?

6                   DR.    ANTKOWIAK:           Dr.    Matthew  
7                   Antkowiak.    Last name   A-N-T-K-O-W-I-A-K.  
8                   Address 1217 Constitution Avenue, N.E. --

9                   VICE CHAIRPERSON SORG:   Thank you.

10                  DR. ANTKOWIAK:    -- D.C. 20002.

11                  VICE CHAIRPERSON SORG:   Thank you.

12                  DR. MILLER:   Dr. Chris Miller, 619  
13                  12th Street, N.E., Washington, D.C.

14                  VICE CHAIRPERSON SORG:   Thank you.

15                  Okay.   We have a few preliminary  
16                  matters with your case here.   Are you aware of  
17                  that?

18                  All right.   So, specifically, two  
19                  things in conjunction.   You submitted a letter  
20                  Tuesday, July 19th which is our Exhibit Number  
21                  24 in which you requested permission to amend  
22                  your application.   Your original application

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1       requested special exception relief to locate  
2       required parking off-site and you were  
3       requesting to amend your application to request  
4       a variance reducing the parking requirement to  
5       zero.

6                         Subsequently, you should have  
7       picked up posters which you let us know, good,  
8       in your letter. Did you pick those up and what  
9       we're missing is your affidavit of posting.

10                        DR. ANTKOWIAK: And I have that  
11       right here in ten not twelve copies, but --

12                        VICE CHAIRPERSON SORG: Great.  
13       That's fine and you can hand that to the  
14       Secretary.

15                        So, what we're going to do is the  
16       Secretary will pass that out so that the Board  
17       Members can review it and what we need to  
18       understand here is, you know, the Board has a  
19       requirement for public notice for the relief  
20       that's being requested and the relief that you  
21       originally requested is of a lower degree than  
22       that which you wish to amend your application

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1 to request.

2 So, we have to understand what was  
3 the notice that was given to the public and based  
4 on what we see here and a couple of questions  
5 that we'll ask you, we will know whether or not  
6 we need to potentially postpone your hearing  
7 for potentially additional notice to be given  
8 to the public.

9 Now, if you can help me, I can't read  
10 the caption. What I'm looking for is what the  
11 caption on the public notice poster says. The  
12 little piece of paper that you glued onto it.

13 Right.

14 So, what I want to know is if it says  
15 special exception or variance. Do you know the  
16 answer to that question?

17 You're going to have to speak with  
18 your mike on.

19 DR. ANTKOWIAK: I don't. I think  
20 I gave you all of our copies.

21 VICE CHAIRPERSON SORG: Oh. Okay.  
22 Moving on from that, I think we can ask a couple

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1 of questions that are relevant to the issue of  
2 public notice.

3 We did not receive a letter from the  
4 local ANC in your file. We did, however,  
5 receive a letter from what I believe is your  
6 Single Member District ANC 6A06.

7 Did you present the application in  
8 front of the ANC?

9 DR. ANTKOWIAK: We did.

10 VICE CHAIRPERSON SORG: And can you  
11 just tell me what happened and what was the  
12 nature of what you presented?

13 DR. ANTKOWIAK: We presented -- am  
14 I allowed to go back and kind of tell you how  
15 this all started at this point or do you want  
16 me to stay --

17 VICE CHAIRPERSON SORG: If you do  
18 so briefly.

19 DR. ANTKOWIAK: Briefly. We  
20 originally -- we planned and submitted our plan  
21 to the Zoning Board.

22 VICE CHAIRPERSON SORG: Um-hum.

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1 DR. ANTKOWIAK: Our plans were  
2 approved with no parking and after we built out  
3 the hospital of about \$350,000, when we went  
4 to get our C of O, we were then told there had  
5 been a minor overlook by the Zoning Board that  
6 we were suppose to have these parking spaces.

7 So, we then obviously started this  
8 process and we went to the ANC and presented  
9 and I have ten copies here as well of what we  
10 presented to the ANC. Basically, meeting the  
11 tests for the variance.

12 So, we were heard by our ANC and  
13 presented these tests of the variance to the  
14 ANC. They passed whatever the ANC was suppose  
15 to pass and they told us a letter would be sent  
16 to the Board.

17 VICE CHAIRPERSON SORG: Okay.  
18 That actually brings me to another point  
19 regarding your application. There were some  
20 other deficiencies which included something  
21 which is the burden of proof in which you explain  
22 how you meet the variance test. That was not

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1 something that was included in your application.

2 It's something that we certainly require to  
3 be able to judge whether or not the relief should  
4 or should not be granted.

5 So, if you have those, you can also  
6 give those to the Secretary.

7 Okay. So, what I'm going to  
8 recommend is based on the lack of previously  
9 and then this current lack of clarity regarding  
10 the affidavit of posting as well as other of  
11 the public notice requirements those being  
12 basically the posting, hopefully meeting with  
13 your ANC which you did and hopefully getting  
14 a letter which unfortunately they didn't submit,  
15 the mailings that the Office of Zoning mailed  
16 out as well as the D.C. Register public notice  
17 -- those are the ways that we let the public  
18 know about people that want to do projects.

19 All right. And my opinion is  
20 because several of those -- because what you're  
21 doing is going from a special exception to a  
22 variance which is, as you mentioned, a higher

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1 standard of relief that you're requesting as  
2 well as a greater degree of relief as well as  
3 the new information that we've received such  
4 as your burden of proof and arguments that would  
5 fill out your application with regard to the  
6 reasoning behind why the Board may grant  
7 anything, I'm going to recommend that we  
8 postpone this hearing to allow the Board ample  
9 opportunity to be able to review the filing that  
10 we just received. As well as for you to be able  
11 to hopefully urge your ANC to get that letter  
12 in and also, I think to re-post the property  
13 with the correct caption for the 14 days that  
14 are required.

15 Now, I understand that you are here  
16 because of something that -- an administrative  
17 issue that you were not aware of and that you've  
18 got a time ticking here because you have a  
19 temporary C of O and we're totally understanding  
20 of that. And you have gone through all of the  
21 right and correct channels.

22 So, what I would like to do is to

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1 postpone this just for a couple of weeks just  
2 so that we can make sure that the posting is  
3 there. That's our procedures. To our July  
4 31st hearing.

5 DR. MILLER: We're fairly certain  
6 that this does say variance. Does that change  
7 anything?

8 VICE CHAIRPERSON SORG: Generally  
9 speaking, when an applicant wants to recommend  
10 -- I'm fairly certain it's sort of difficult,  
11 but when an applicant wants to change their --  
12 amend their application from relief that is  
13 smaller to relief that is bigger and especially  
14 when the facts of the project, for example, this  
15 space is being held off-site and then the space  
16 is not being provided, that's something that  
17 we do typically require be re-noticed for the  
18 public and that is really the precedent that  
19 we go on here. Just so that, you know, you and  
20 your community have ample opportunity.

21 We see that you do have good support  
22 here, but we want to make sure that there's a

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1 full record application for us to be able to  
2 look at.

3 So, that being said, does any other  
4 Board Members have comments on these preliminary  
5 matters? Okay.

6 So, are you available to appear for  
7 a postponed hearing on July 31st? That would  
8 be --

9 SECRETARY MOY: Madam Chair.

10 VICE CHAIRPERSON SORG: Well, wait  
11 a second. Twenty-fourth.

12 SECRETARY MOY: Yes, we do have a  
13 meeting on the 24th as well as the 31st.

14 VICE CHAIRPERSON SORG: Okay.

15 SECRETARY MOY: But, I was going to  
16 suggest if it was the desire of the Board given  
17 the docket on the 31st that you may be able to  
18 hold this application in the morning.

19 VICE CHAIRPERSON SORG: I think  
20 that this Applicant may want to get this done  
21 as soon as possible and so, if your preference  
22 is July 24th, I think we can -- and Mr. Hood

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1 is back on July 24th, I think that given the  
2 nature of this case we can hear them in the  
3 afternoon on the 24th.

4 That means though that you have to  
5 get your posting out ASAP.

6 DR. MILLER: If this posting is  
7 accurate, should we just leave it up?

8 VICE CHAIRPERSON SORG: Yes.

9 DR. ANTKOWIAK: And just to be  
10 clear, the reason why we decided to go for the  
11 variance as opposed to a special exception was  
12 based on a recommendation from the Board? It  
13 wasn't a decision that -- we kind of just were  
14 following the recommendations from the Board  
15 from a special exemption to a variance if I'm  
16 not incorrect.

17 VICE CHAIRPERSON SORG: I think you  
18 --

19 DR. ANTKOWIAK: I have the email.

20 VICE CHAIRPERSON SORG: That's the  
21 Zoning Administrator not the Board.

22 DR. ANTKOWIAK: Right. Sorry.

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1 Yes.

2 VICE CHAIRPERSON SORG: So, we know  
3 why you're here and we know the background and  
4 we understand the procedural reasons why you're  
5 here.

6 What we were not clear on in your  
7 application is the public notice and things  
8 happened a little bit backwards here. Which  
9 is what needs to happen is that, and we're going  
10 to do this in a second, you need to request to  
11 amend your application to the Board and then  
12 we can accept that amendment and then you can  
13 re-post the property and we will come back in  
14 the afternoon on July 24th.

15 Sounds good? So, it's not maybe  
16 exactly what you want, but what I need you to  
17 do is on the record request the amendment to  
18 amend your application from the special  
19 exemption to the variance.

20 DR. MILLER: We would like to do  
21 that.

22 VICE CHAIRPERSON SORG: Okay. So,

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1       we will accept by consensus that amended  
2       application and we will see you back here in  
3       afternoon on the 24th.

4               If you have questions about the  
5       procedures with regard to the posting and notice  
6       requirements, you can see the office across the  
7       hall. Okay.

8               Thank you.

9               ZC CHAIR HOOD: Madam Chair, just  
10       a quick question.

11               VICE CHAIRPERSON SORG: Oh.

12               ZC CHAIR HOOD: And I'm not sure.  
13       Did your representation to the ANC, the Zoning  
14       Committee, did that -- did you present your  
15       amended application or did you present it as  
16       it was in this current form? The first form.

17               DR. ANTKOWIAK: We presented our  
18       case to the ANC as a variance.

19               ZC CHAIR HOOD: Okay. Thank you.

20               SECRETARY MOY: All right. So,  
21       this application's been rescheduled to July 24th  
22       in the afternoon.

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The next and last application before the Board is Application No. 18375. This is the application of Florida Avenue Residential LLC pursuant to 11 DCMR 3103.2 and 3104.1 for variance from the required standards for rear yard requirements Section 774, lot occupancy requirements Section 772, off-street parking requirements Section 2101 and loading facilities requirements Section 2201 and special exception relief pursuant to Section 1906 from the streetwall requirements under Subsection 1903.3 and the roof structure requirements under Subsection 770.6. All this 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 premises 710 Florida Avenue, N.W. Property located in Square 416, Lot 31.

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1 requests for party status I believe.

2                   That completes the staff's  
3 briefing, Madam Chair.

4                   VICE CHAIRPERSON SORG: Thank you  
5 very much, Mr. Secretary.

6                   Let us begin with what I see as two  
7 preliminary matters.

8                   The first one -- but, even before  
9 we do that, I'd like to sort of -- because  
10 everybody in the room now is here for this case,  
11 I want to get an idea of kind of who is here  
12 for what.

13                   So, if you're here with the  
14 Applicant, can you please raise your hand?

15                   And if you're here as an individual  
16 in support, can you please raise your hand?

17                   And if you're here as an individual  
18 in opposition, can you please raise your hand?

19                   And if you're with an agency, you're  
20 sitting up here.

21                   Okay. That's the first thing. The  
22 second that we want to -- thank you very much

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1 to everybody and is everybody who is testifying  
2 here to be sworn in by the Secretary? Okay.  
3 Good.

4 The second thing is that we need to  
5 deal with the preliminary matter of amending  
6 the application.

7 So, why don't we have the Applicant  
8 introduce themselves and then we can go ahead  
9 with that.

10 MS. BROWN: Thank you, Madam Chair.

11 For the record, I'm Carolyn Brown  
12 with the law firm of Holland & Knight here on  
13 behalf of the Applicant Florida Avenue  
14 Residential, LLC which is an affiliate of the  
15 JBG Companies.

16 To my right is Lauren Jezienicki of  
17 the JBG Companies. To her right is John Maisto  
18 of BKV Architects. To my left is Erwin Andres  
19 of Gorove/Slade Associates traffic engineer and  
20 to his left is Steven Sher our expert in land  
21 use and zoning.

22 VICE CHAIRPERSON SORG: Thank you.

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1                   So, I see that there is a request  
2 to amend the application and if I'm not mistaken,  
3 that is to include the two areas of special  
4 exception relief. Is that correct?

5                   MS. BROWN: Madam Chair, they were  
6 included in the original application.

7                   VICE CHAIRPERSON SORG: Okay.  
8 Well, in my exhibit number -- then in Exhibit  
9 Number 25, you request -- can I turn to OAG?  
10 We had the discussion about the request for the  
11 amendment and --

12                  MS. GLAZER: I'm just noticing the  
13 original zoning self-certification form, the  
14 relief for area variances selected but not  
15 special exception and there was another exhibit  
16 that I saw that listed --

17                  VICE CHAIRPERSON SORG: Right.

18                  MS. GLAZER: -- only the variance  
19 relief and not the special exception although  
20 there are several filings that list the special  
21 exception as well.

22                  MS. BROWN: Madam Chair, I'm

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1 looking at the Form 120.

2 VICE CHAIRPERSON SORG: Um-hum.

3 MS. BROWN: And it specifically  
4 provides all the areas of relief that we are  
5 requesting.

6 VICE CHAIRPERSON SORG: Okay. I do  
7 know obviously that it's included in all of the  
8 reports from the agencies and public meetings  
9 and also in all of your filings. So, that's  
10 fine. Perhaps there is just an error in one  
11 of the additional forms. Here I'm looking also  
12 at --

13 MS. GLAZER: Madam Chair, I'm just  
14 looking at Exhibit 5, the preliminary statement  
15 of compliance. It appears to list the variance  
16 relief on page 1. Now, let's see if it -- oh,  
17 it does list the special exception relief. That  
18 is correct.

19 VICE CHAIRPERSON SORG: Okay.

20 MS. GLAZER: So --

21 VICE CHAIRPERSON SORG: So, and  
22 then I'm also looking at Form 120 and you're

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1                   absolutely right that all these areas of relief  
2                   were requested. So, no preliminary matters.

3                   The second matter that the Board --  
4                   before we get into the Applicant's case, the  
5                   second preliminary matter that the Board I think  
6                   would like to deal with is we've received several  
7                   filings from individuals in opposition to this  
8                   application that are including themselves in  
9                   the 9th Street Business and Property Owners.

10                  Now, with regard to these filings  
11                  and I will name them, we have Exhibit Number  
12                  23, Exhibit Number 26, Exhibit Number 29 and  
13                  Exhibit Number 32. All somewhat similar.

14                  But, what I want to do here is in  
15                  specific we are going to -- the Board will strike  
16                  from the record Exhibit Number 26 as it does  
17                  not relate to the subject application. It  
18                  actually relates to an application that we are  
19                  not hearing for awhile. So, we're going to  
20                  strike Exhibit Number 26 from the record.

21                  All of the -- but, that leads me to  
22                  make a comment and this is for all those people

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1 looking to testify today in this case and that  
2 is that several of the facts and issues that  
3 are brought up in these opposition filings as  
4 well as in other filings are related to the other  
5 site. What is being referred to as the West  
6 Site and so, we're going to limit the discussion  
7 today and I will be very strict on this that  
8 we do not -- are not going to allow any testimony  
9 related to the Western Site or to the other  
10 application because what we're here to do today  
11 is to discuss only the specific relief that's  
12 requested under this application on this site.

13 In addition, these filings also  
14 bring up a lot of issues that are not related  
15 to the Board's purview and the Board's purview  
16 is just zoning and it's not only just zoning.

17 It's just the specific areas of relief that  
18 we're talking about here in this application.

19 So, we're also not going to look for  
20 and not going to consider testimony that's  
21 related to issues outside of that arena and that  
22 includes, for example, alley closings or HPRB

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1 proceedings. It's not helpful to our judgment  
2 and it's not a good use frankly of our time to  
3 be talking about it.

4 So, that being said, we will go ahead  
5 with the Applicant's case and I will just make  
6 a recommendation to the Applicant. I think we  
7 do definitely want to hear your -- looking  
8 forward to hearing your presentation and also  
9 focus on the comments in the OP report and also  
10 I was interested in some further discussion  
11 about the Florida Avenue sidewalk and the  
12 streetwall.

13 And then I'll also open it up to  
14 other Board Members to see if there's any  
15 specific points for the Applicant that you might  
16 request that they want to highlight.

17 Okay. Seeing no others, then I turn  
18 it over to you.

19 MS. BROWN: Thank you very much,  
20 Madam Chair.

21 Again, for the record, Carolyn Brown  
22 with Holland & Knight on behalf of the Applicant.

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1                   We're very pleased to be here today  
2 to present our case. We believe we have fully  
3 explained how we have met the burden of proof  
4 and we will definitely focus our presentation  
5 on the lot occupancy issues raised in the Office  
6 of Planning report and the streetwall and  
7 sidewalk discussion.

8                   Before I begin, we have handed out  
9 some additional materials for you. One is a  
10 two-page supplemental information sheet on how  
11 we meet the lot occupancy requirement that we  
12 shared with the Office of Planning last week.

13                  So, that details a little bit more about how  
14 we have met our burden in that instance.

15                  You should also have in the record  
16 a second letter of support from the U Street  
17 Neighborhood Association. If that hasn't made  
18 it to you, I have additional copies for you.

19                  VICE CHAIRPERSON SORG: It has.

20                  MS. BROWN: Thank you.

21                  VICE CHAIRPERSON SORG: As well --  
22 and I don't want to interrupt you, but as well

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1 the other later filing from Councilmember  
2 Graham.

3 MS. BROWN: Wonderful. Thank you.

4 We've also just handed out copies  
5 of our PowerPoint presentation that you'll see  
6 shortly and the expert report of Steve Sher.

7 Secondly, I'd like to qualify our  
8 witnesses as experts. You have their exhibits  
9 under Tab H.

10 The first is Ms. Lauren Jezienicki,  
11 an expert in real estate development and I can  
12 do this individually or collectively.

13 Mr. John Maisto as an expert in  
14 architecture. Mr. Maisto has previously been  
15 qualified as an expert before this Board and  
16 the Zoning Commission.

17 Mr. Erwin Andres has appeared before  
18 this Board numerous times as an expert in  
19 transportation.

20 And Mr. Steven Sher is an expert in  
21 zoning and land use.

22 VICE CHAIRPERSON SORG: Thank you

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1 very much.

2 The Board has had time to review the  
3 CVs of the proffered experts and we will be  
4 accepting certainly, of course, those three,  
5 Mr. Maisto, Mr. Andres and Mr. Sher, as experts,  
6 but we will not be accepting Ms. Jezienicki as  
7 an expert in this case. But, we will most  
8 certainly be looking for her insight in  
9 development and in this project.

10 Thank you.

11 MS. BROWN: Thank you.

12 I will proceed with our case. We  
13 are here today to seek two special exceptions  
14 and four variances in order to construct a new  
15 six-story apartment building with ground-floor  
16 retail at the eastern edge of the U Street  
17 Historic District. The site if one of two  
18 former WMATA's parcels at the corner of 8th and  
19 Florida Avenue that have remained vacant since  
20 the 1970s when Metro rail was constructed.

21                   While the number of exceptions and  
22                   variances may initially sound like a lot, they

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1 are relatively speaking somewhat minor in  
2 nature. One of the most important things to  
3 keep in mind is that in this development, we  
4 do not seek any relief from height or FAR as  
5 permitted in the Arts/C-2-B District which has  
6 a much higher burden of proof. The buildings  
7 will be no larger than what is allowed under  
8 the regulations.

9                   The relief we are seeking is to  
10 insure that the building can fit on this  
11 irregular corner site given the enormous  
12 constraints placed on the development due to  
13 the Metro rail tunnels running directly beneath  
14 the site and to conform to the design constraints  
15 given to us by the Historic Preservation Review  
16 Board.

17                   We're very pleased to have HPRB's  
18 concept approval for the height and massing and  
19 we will be returning to them later this month  
20 for further refinements to the exterior  
21 articulation of the building.

22                   We're also very pleased to have the

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1 support of the Office of Planning for the special  
2 exceptions for the roof structures and the  
3 streetwall requirements of the Arts Overlay and  
4 the variances from parking, loading and rear  
5 yard requirements.

6                   With the supplemental information  
7 that we've submitted to them last Friday and  
8 that we've submitted today to you, we are hopeful  
9 that we'll have OP's endorsement of the lot  
10 occupancy relief.

11                   Office of Planning has been  
12 instrumental in guiding us on this project and  
13 we are very appreciative of their hard work to  
14 help bring to fruition the Duke Plan for this  
15 site which calls for large scale, mixed-use  
16 development.

17                   As you will hear from Ms. Jezienicki  
18 shortly, we also have the support of the  
19 community and most significantly that of the  
20 ANC 1B. I believe their letter may have been  
21 submitted late to the record, but we ask the  
22 Board to waive its rules to accept the ANC's

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1 official position on this matter and accord its  
2 views great weight.

3 Our prehearing submission and  
4 supplemental information that we submitted  
5 today sets forth in detail how we meet our burden  
6 of proof and we will focus our testimony today  
7 on the areas that you have asked us to.

8 With that, I will turn it over to  
9 our first witness Ms. Jezienicki.

10 Thank you.

11 VICE CHAIRPERSON SORG: Thank you.

12 MS. JEZIENICKI: Lauren Jezienicki  
13 with the JBG Companies representing Florida  
14 Avenue Residential.

15 Just to orient the Board to the site,  
16 we are at the intersection of 8th Street, N.W.  
17 and Florida Avenue. This is just at the  
18 terminus of the U Street corridor and adjacent  
19 to Howard University, two blocks from the Shaw  
20 Metro Station and the U Street Metro Station.

21 The lot is currently grass covered  
22 and as Carolyn had mentioned has sat vacant for

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1                   nearly four decades as it was initially used  
2                   a staging ground for the construction of the  
3                   WMATA green line tunnels built in the 1970s.

4                   Many       prior        developers       have  
5                   attempted to redevelop the property and failed  
6                   to break ground.    We are excited about the  
7                   opportunity to work on this site, but understand  
8                   there are many inherent challenges.

9                   The Duke Redevelopment Framework  
10                  Plan published by the Office of Planning has  
11                  identified this site as gap in the open fabric  
12                  of the neighborhood.    Redevelopment here will  
13                  connect the neighborhoods east of 7th Street  
14                  including the Howard Theater and Howard  
15                  University to the vibrant U Street corridor.

16                  By filling this vacant site, the  
17                  project will deliver additional units to the  
18                  city's much needed affordable housing stock,  
19                  vast streetscape improvements along Florida  
20                  Avenue and 8th Street's neighborhoods serving  
21                  retail and residential dwelling units two blocks  
22                  from two Metro stations.

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1                   In the months since the project was  
2 conceived, we've met with City agencies early  
3 and often. From those discussions, we have  
4 garnered OP and DDOT's support for the projects  
5 massing, height, density, setbacks, parking and  
6 loading and HPO and HPRB's support for the  
7 projects height and massing as Carolyn had  
8 mentioned.

9                   We are still working with HPO staff  
10 and the HPRB to refine the project's  
11 architectural skin and facade details.

12                   Councilmember Graham supports the  
13 project as currently designed as does ANC 1B.

14                   In garnering the support of ANC 1B  
15 and the local community, we've held 17 meetings  
16 over the last seven months.

17                   We understand that OP did have a  
18 concern with regards to our request for lot  
19 occupancy relief. John Maisto will discuss the  
20 requested relief in more detail, but I would  
21 just like to summarize the points made in a  
22 supplemental memo provided to OP staff on

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1 || Friday, July 6.

2 The practical difficulty imposed on  
3 the project which results in the need for a lot  
4 occupancy waiver is created through a confluence  
5 of factors. Primary to these is the undue  
6 burden associated with the location and nature  
7 of the below-grade WMATA tunnels and fan  
8 structure.

These include 150 percent premium unsupported excavation, construction costs, unique building foundation design, specialized engineering analyses and consultant fees, daily seismic monitoring of the tunnels during construction, a two-month delay to our construction schedule as anticipated by our general contractor, inability to locate loading trash back of house operations in the below grade garage given it's only one level which displaces rentable retail area on the ground floor and the requirement to accommodate the loading on the street level. Plus the accommodations for the streetscape -- streetwall setbacks and the

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1       streetscape guidelines from the city translates  
2       to a loss of approximately 3200 square feet of  
3       ground floor retail area.

4                   Further, the inefficient indoor  
5       site dimensions create practically difficult  
6       floor plate design. Accommodating an 80  
7       percent lot occupancy on floors 2 through 5  
8       results in a 90 percent increase in studio units,  
9       a 27 percent decrease in one-bedroom units, a  
10       58 percent decrease in two-bedroom units,  
11       generally less diversity in the residential  
12       housing stock provided to the neighborhood and  
13       delivered as affordable units and a total loss  
14       of approximately 8,000 square feet of  
15       residential area or about 10 percent of the  
16       allowable FAR.

17                   With that, I'll turn it over to John.  
18                   He'll discuss the architectural plans for the  
19       project in more detail.

20                   MR. MAISTO: Good afternoon, ladies  
21       and gentlemen of the Board.

22                   My name is John Maisto. I'm a

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1 registered architect. I represent BKV Group  
2 Architects, the architect of record for this  
3 project.

4 We are partnering with the Miller  
5 Hull Partnership of Seattle who is helping us  
6 with the design of this project. They have  
7 appeared here at least twice in front of the  
8 Historic Preservation Review Board and helping  
9 model and form the exterior massing of this  
10 building.

11 VICE CHAIRPERSON SORG: I don't  
12 mean to interrupt you. So, BKV, you are the  
13 architect of record?

14 MR. MAISTO: We are the architect  
15 of record. Correct.

16 VICE CHAIRPERSON SORG: Okay.

17 MR. MAISTO: The site as you can see  
18 is located on the corner of Florida and 8th with  
19 U Street to the west, Howard University to the  
20 north, the continuation of Florida Avenue toward  
21 Benning Road to the east and T Street in the  
22 neighborhood below, the Shaw neighborhood below

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1 to the south.

10 As you can see here, it's 70 feet  
11 high within the height limit that's by right  
12 based on a measuring point that we determined  
13 on Florida Avenue.

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1 garage to one floor.

2 The orange or peach colored to the  
3 left is the WMATA fan structure with those  
4 checkered stripes are the grates that are in  
5 the sidewalks of 8th Street that are a  
6 significant piece of building underground.

14 Another shot. These would be  
15 birdseye view pictures. This is at the street  
16 level. You can see how that fan structure steps  
17 down and the proximity of those tunnels to the  
18 -- I guess I should use this. That's the garage  
19 level. There's the street level and this is  
20 the retail level on the floors above.

Now, a wormseye view as they say  
looking up at the building from below and you

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1 can really see the effect of this structure.  
2 How it shapes actually the corner of the building  
3 right here. Because of the limits to the  
4 construction, we actually had to do some  
5 creative cantilevering of an underground grade  
6 beam to pick up some of the weight of the building  
7 above being very respectful of the existing  
8 infrastructure for WMATA.

9 Neighborhood retail uses are  
10 planned for the whole ground floor. As you can  
11 see, we have fairly wide sidewalks now on Florida  
12 Avenue and on 8th Street. Primarily, the 8th  
13 Street width is due to the WMATA fan structure  
14 and the grates and the property line actually  
15 sets back significantly.

16 Florida Avenue currently has a very  
17 narrow sidewalk and so, as you'll see, we've  
18 pulled back the retail line off of the property  
19 line to create a wider sidewalk. In discussions  
20 with DDOT, we've determined a dimension which  
21 we can get into in a little bit.

22 The parking as you can see is all

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1 on one floor with the various items in the  
2 corners that aren't usable that are required  
3 to make a building work. For example,  
4 stormwater management, fire, domestic water.  
5 Bicycle parking as required by DDOT per the new  
6 Zoning Regs that we're anticipating.  
7 Electrical room. Some building storage, but  
8 very, very utilized entirely to provide 29  
9 parking spaces.

10 The parking and loading is  
11 off-street back in the south end of the building.

12 We did the perfunctory truck turning  
13 diagrams with a 30-foot truck to demonstrate  
14 that a front-in/back-out panel truck would  
15 adequately serve retail and residential uses  
16 for this project.

17 One of the things we're seeking is  
18 relief from a 55-foot-deep berth because a truck  
19 larger than 30 feet would completely render the  
20 retail level unusable with regard to the turning  
21 requirements for larger trucks.

22 This is a typical floor plate. It's

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1 a double-loaded corridor on the south wing.  
2 Single-loaded corridor along Florida Avenue.  
3 Central elevator core. Two exits. They're  
4 very conventional construction.

5 The roof deck above the sixth floor  
6 is a combination of recreational amenity space  
7 for the residents as well as the mechanical  
8 equipment that has to serve the units and other  
9 required requisite mechanical equipment to  
10 serve the building.

11 So, briefly, I will describe the  
12 description of the areas of relief and they are  
13 as follows.

14 We're looking for a parking  
15 variance. Based on the number of units for this  
16 project and the amount of square footage of  
17 retail, we determined that the required number  
18 of spaces for residential is 32 and eight for  
19 retail. Total of 40. We're proposing 29  
20 residential spaces only. So, a relief of 11  
21 parking spaces.

22 With regard to parking and loading

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1     -- I'm sorry. For loading, we are required to  
2     have a 55-foot loading berth for residential.

3     A 55-foot loading berth. A 200-square-foot  
4     platform. A 20-foot loading space and for the  
5     commercial uses, we have to have a 30-foot  
6     loading berth and a 100-square-foot platform.

7     We are seeking relief from the 55-foot loading  
8     berth as I explained earlier. The 30-foot  
9     loading berth could be shared by both  
10    residential and commercial clients or tenants  
11    I should say and the 100-square-foot platform  
12    can be -- essentially, the same function can  
13    be taken care of by the 200-square-foot platform  
14    and they're in very close proximity to the  
15    elevators. So, that the service to the  
16    residents as well as the retail is provided.

17                   With regard to rear yard relief, we  
18    have determined that the front of the building  
19    is on Florida Avenue or sorry 8th Street. I  
20    apologize. So, the rear yard would then be on  
21    the east property line and if we were to have  
22    a rear yard of 15 feet, we would create a gap

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1 on the street frontage of Florida Avenue. Not  
2 a good urban condition.

3                   If we chose Florida Avenue to be our  
4 building front, the same condition would happen  
5 on the south wing. There would be a gap. So,  
6 we are respectfully requesting a variance on  
7 that.

8                   We realize that we're creating a  
9 closed-court condition and we comply based on  
10 height and width of the court.

11                  With regard to lot occupancy, this  
12 chart which is in the application shows the lot  
13 occupancy on each floor. It's a little bit hard  
14 to read. I apologize. Ninety percent lot  
15 occupancy on the second, third and fourth  
16 floors. Eighty-two point six if I'm not  
17 mistaken on the fifth floor and 79.5 if I'm not  
18 mistaken on the sixth floor.

19                  So, we comply on the sixth floor.

20                  We're just over it on the fifth floor and on  
21 the second, third and fourth floors, we are  
22 requesting the variance. Well, we're

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1 requesting it also on the fifth.

2                   If we were to -- just for the  
3 purposes of discussion, if we were to provide  
4 80 percent lot occupancy, the building shape  
5 would be the same shape, but this gray area  
6 indicates the area that's no longer part of that  
7 -- part of the building. The green is the 80  
8 percent lot occupancy and I apologize for the  
9 notations. We did this as a quick analysis.

10                  Essentially, we're still having a  
11 double loaded corridor, but the units are much  
12 smaller which goes back to what Ms. Jezienicki  
13 discussed with a 90 percent increase in studio  
14 units and it's just there are other aspects of  
15 moving this corridor that creates some hardships  
16 within the building including how it affects  
17 the parking layout which we're worried about.

18                  We are also seeking a special  
19 exception on roof structures. As you can see,  
20 we've got three separate structures.  
21 Typically, it should all be one, but because  
22 of the distance, the proper distances from the

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1       edges of the roof and the fact that they're sort  
2       of central to the building, we believe that this  
3       is a reasonable request.

4                   This particular roof stair is eight  
5       feet from the edge of the roof, but it's eight  
6       feet from the higher roof as opposed to the lower  
7       roof. It's 19 feet away from the edge of the  
8       lower roof.

9                   And lastly, the streetwall, excuse  
10      me, the streetwall relief that we're requiring  
11      is not less than 75 percent to be built to the  
12      property line. We're seeking relief that none  
13      of the streetwall on Florida Avenue be built  
14      to the property line primarily because of the  
15      requirement that -- well, not requirement.  
16      But, the discussions we had with DDOT and the  
17      street manual guidelines that indicate that a  
18      wider sidewalk is really desirable on Florida  
19      Avenue.

20                  So, it should be noted that the owner  
21      is ceding some, you know, valuable rentable area  
22      to achieve that for the greater good.

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1 So, in conclusion, it's our  
2 professional opinion that the variances and  
3 special exceptions that we're seeking are  
4 reasonable given the site conditions which are  
5 as follows, I'll repeat them, irregularly shaped  
6 site, constrictive WMATA limits specifically  
7 the tunnels and the fan structure that affect  
8 the way the building is built underground, the  
9 need to increase sidewalk width of Florida  
10 Avenue for safer, more desirable public space  
11 and then respecting the historic context. Not  
12 only from an architectural design standpoint,  
13 but also in our dealings with the HPRB to really  
14 try to mass the building so that it faces Florida  
15 Avenue in a proper way and it shows deference  
16 to its neighbors to the south.

17 So, again, this confluence of  
18 factors each by themselves, somewhat of a  
19 challenge in varying degrees creates a practical  
20 difficulty in providing what we see if a  
21 compliant building. So, to try to achieve all  
22 of these goals is unduly burdensome and

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1       unviable. So, we respectfully request that the  
2       Board weigh these extenuating factors while  
3       considering the application.

4 Thank you very much for your time.

5 MS. BROWN: We'd like to move next  
6 to our traffic engineer Erwin Andres.

7 VICE CHAIRPERSON SORG: I would  
8 just jump in and say, Mr. Andres, I believe that  
9 your report was very exhaustive and I don't have  
10 a great deal of focused request from you. I  
11 don't know if other Board Members do. Although,  
12 we want to give everyone their chance. We'd  
13 like to see --

14 MS. BROWN: Madam Chair, we're  
15 happy to proceed to Mr. Sher as our last witness  
16 then if you're satisfied with the traffic  
17 analysis.

18 VICE CHAIRPERSON SORG: I think  
19 that would be fine. Thanks.

VICE CHAIRPERSON SORG: Thank you.

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1 is Steven E. Sher, the Director of Zoning and  
2 Land Use Services with the law firm of Holland  
3 & Knight.

4 Consistent with the Chair's  
5 direction to go straight to the point, the two  
6 issues that the Board's identified for us to  
7 address are the variance from the lot occupancy  
8 requirements and the special exception  
9 regarding the setback on Florida Avenue.

10 The Board is well aware of the  
11 standards for granting a variance. These are  
12 area variances, practical difficulty due to the  
13 strict application of the regulations and not  
14 causing an adverse effect on the neighborhood.

15 What -- turn on.

16 VICE CHAIRPERSON SORG: We're  
17 getting the light. Yes.

18 MR. SHER: I sound better in the  
19 dark anyhow. High tech.

20 VICE CHAIRPERSON SORG: How many  
21 people does it take?

22 MR. SHER: Yes.

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1                   VICE  CHAIRPERSON  SORG:  Please  
2 continue.

3                   MR.  SHER:  Okay.  The  basic  
4 inhibitors are the factors that make the site  
5 exceptional.  Mr. Maisto has talked about those  
6 and I'm just going to repeat them quickly again.

7                   The size and shape of the lot.  The distance  
8 of the property line from the curb on Florida  
9 Avenue.  The presence of the green line tunnels  
10 under the site.  The depth of the tunnels.  The  
11 need for a standoff distance beyond the depth.

12                   The type  of  construction  used  for  this  
13 particular tunnel segment and then lastly and  
14 to a lesser extent, the limitation on taking  
15 access not from Florida Avenue.  So, our only  
16 way to get into the site is off 8th Street and  
17 when you look at that as it relates to some of  
18 the other things regarding parking and loading,  
19 that's more significant.

20                   Okay.  What does all of that have  
21 to do with specifically lot occupancy?

22                   I would respectfully suggest that

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1       lot occupancy and rear yard kind of get tied  
2       together here. Because in order to make this  
3       project reasonable and doable, you need to be  
4       able to get the density permitted under the  
5       Arts/C-2-B Zone which allows a 5.0 FAR. So,  
6       when you try and figure out how do you get 5.0  
7       FAR on this site if you are constrained by all  
8       of the things that normally apply, as a practical  
9       matter, you don't get there.

10           So, what happens is if you have to  
11       take a 15-foot swat for a rear yard off one side,  
12       that being the south side or the other side,  
13       that being the east side, when you start having  
14       to factor the residential floors down to 80  
15       percent lot occupancy on floors two, three and  
16       four instead of the 90 percent we're asking,  
17       you don't have enough space left over to get  
18       the density on the site.

19           In order to be able to address the  
20       needs that arise because of the Metro tunnel,  
21       we've got to get the 5.0 FAR. So, without the  
22       5.0 FAR, we don't have a project that makes

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1 sense. Without being able to get the relief  
2 on the side yard and the lot occupancy, we don't  
3 have enough place to put the 5.0 FAR.

4 I've gone through that in a little  
5 more detail, but that's sort of gone right at  
6 why we need relief on those two points.

7 With respect to the setback on  
8 Florida Avenue, the urban design principle here  
9 was bring the building out to the street. Have  
10 the store fronts at the line of the building  
11 rather than in an arcade back behind the building  
12 as had been viewed -- somewhat unsuccessfully  
13 occurred in downtown before the downtown  
14 development district and other things like that.

15 This is a different situation.  
16 Now, we're not -- this is not a variance. It's  
17 a special exception and the standards are set  
18 out in the regulations. We don't have to prove  
19 exceptional situation or condition, but what  
20 happens if the distance between the curb and  
21 the property line on the Florida Avenue side  
22 of the building is 12 feet. It's only 12 feet.

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1       When you take 4 feet out for the tree box, you  
2       have only 8 feet left as a passageway for  
3       pedestrians basically.

4                   So, what we've done and we have held  
5       the building line above and you could see from  
6       the elevations that John showed before that the  
7       second floor and higher floors cantilever out  
8       over that first floor. But, we've pulled the  
9       first floor back a minimum of -- let me get the  
10      right statement here. It's a minimum of 5 feet  
11      92 inches. A very precise dimension, but it  
12      varies some because the facade on the first floor  
13      is not completely straight. It's curvilinear  
14      or undulating. I didn't like undulating, but  
15      whatever. It varies some. But, it is no less  
16      than -- slightly less than 6 feet.

17                  So, what we've done is effectively  
18       widen the public realm from the curb to the face  
19       of the first floor from the 12 feet that now  
20       exists to almost 18 feet and so, what that does  
21       is provide a better scenario and situation for  
22       pedestrian passage along the street while we

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1 believe accomplishing the general goal of the  
2 overlay which is to create a lively street life  
3 and bring that retail to a point where it  
4 actually can be appreciated by the pedestrians  
5 passing by.

6 So, for that reason, we believe that  
7 actually granting the exception to the overlay  
8 more completely goes to the goals of the overlay.

9 So, it's kind of a little bit of a contradiction  
10 or the way I've said it makes it sound like a  
11 contradiction, but I really think it is the  
12 proper way to go on this.

13 So, I think I will stop at that  
14 point. You have my conclusions on pages 10 and  
15 11 of the report. I will not reiterate them,  
16 but I believe that we have met the standards  
17 for the relief that we've asked for and that  
18 the Board should grant the application.

19 MS. BROWN: Madam Chair, that  
20 concludes our direct testimony. We would be  
21 happy to answer any questions and reserve some  
22 remarks for closing.

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1                   VICE CHAIRPERSON SORG: Thank you  
2 very much.

3                   Do Board Members have questions for  
4 the Applicant? Yes, please.

5                   MEMBER MacMURRAY: Thank you, Madam  
6 Vice Chair.

7                   I do have one question. In your  
8 testimony, you stated -- this is for the  
9 architect. I'm sorry. What was your name  
10 again, sir?

11                  MR. MAISTO: John Maisto.

12                  MEMBER MacMURRAY: John Maisto.

13                  Mr. Maisto, you stated that the  
14 variance you're seeking for the residential is  
15 11 spaces and then the retail was eight.

16                  MR. MAISTO: No. Let me go to that  
17 slide. We are seeking variance for 11 spaces  
18 total. Our calculations are -- sorry. Let me  
19 just. Our calculations demonstrate that based  
20 on the unit mix, we're required 32 spaces for  
21 residential and eight spaces for retail based  
22 on the Zoning Regulations. So, that's a total

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1 of 40.

2 We're providing 29 in the garage.

3 So, the variance is for 11 spaces.

4 MEMBER MacMURRAY: And there would  
5 be no surface parking either. Just the --

6 MR. MAISTO: No, surface parking.

7 Correct.

8 MEMBER MacMURRAY: Thank you.

9 MR. MAISTO: On the property.

10 MEMBER MacMURRAY: Okay.

11 VICE CHAIRPERSON SORG: Additional  
12 Board questions?

13 ZC CHAIR HOOD: Yes, Madam Chair,  
14 I did want to talk to Mr. Andres about the  
15 loading, but you kind of went over  
16 transportation. Yes, it was in-depth, but I  
17 did want to talk about the loading.

18 No, I don't want to come to the BZA  
19 and take over.

20 So, Mr. Andres, let's go back to the  
21 PowerPoint that had the loading. You know, the  
22 normal questions. I want to know about the

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1                   trucks.

2                   MR. ANDRES:  Absolutely.

3                   ZC CHAIR HOOD:  What's going to  
4                   happen with the 55 footers that all show up at  
5                   the same -- I want to know the same -- the normal  
6                   questions.

7                   MR. ANDRES:  Yes, well, just to go  
8                   through the trucking loading that Mr. Maisto  
9                   had identified.  With respect to the plan, the  
10                   plan is for the 30-unit trucks to actually pull  
11                   in head first so that they're not backing in  
12                   from the public roadways.  Make their maneuvers  
13                   on the ground floor into the appropriate loading  
14                   area.  They do their business and afterwards,  
15                   they pull out head first.

16                   I think Mr. Maisto might have  
17                   misspoke and said head in/back out.  It's  
18                   actually head in and then head out.  So.

19                   ZC CHAIR HOOD:  Okay.  Can you show  
20                   me how head in and head out's going to work?

21                   MR.        ANDRES:                Absolutely.  
22                   Actually, if I were to take a look at the ---

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1                   VICE CHAIRPERSON SORG: Whoever's  
2 talking does need to make sure that they're on  
3 the mike. Thank you.

4                   MR. ANDRES: The plans show that if  
5 you're coming from 8th Street chances are you're  
6 going to be heading south on 8th. You're going  
7 to turn left into the site and then if I take  
8 it from this point up top, it's going to pull  
9 forward and then back into the appropriate  
10 loading area.

11                  ZC CHAIR HOOD: So, it's not really  
12 -- is that -- well, head in or is that head in  
13 to a point and then we're going to back in and  
14 then we're going to head back out.

15                  MR. ANDRES: Yes. Yes, and that  
16 operation's consistent with many of the urban  
17 sites. You know, case in point, in Georgetown  
18 Safeway, there's a similar condition.

19                  ZC CHAIR HOOD: And we have two  
20 berths. Right? Is it two?

21                  MR. ANDRES: Yes, there's a 30-foot  
22 berth which complies with zoning and there's

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1 also a 20-foot service berth as well.

2 ZC CHAIR HOOD: So, we're not  
3 looking at no trucks over 30 feet?

4 MR. ANDRES: Within the building.  
5 That's correct.

6 ZC CHAIR HOOD: What happens if they  
7 do come? The same questions. What happens if  
8 they --

9 MR. ANDRES: In the event that a  
10 larger truck has to come, they would have to  
11 comply with similar situations throughout the  
12 city where they would have -- it would have to  
13 take place curbside, off hours or potentially,  
14 they would have to go through DDOT and have those  
15 restricted.

16 However, the -- given the type of  
17 units, the size of the units are primarily one  
18 bedrooms and studios. So, the moving trucks  
19 associated with them are rather small. You  
20 know, if anything they'll be large vans if that.

21 ZC CHAIR HOOD: So, those potential  
22 residents would know that they can't have a 55

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1       or --

2                    MR. ANDRES: Yes.

3                    ZC CHAIR HOOD: -- anything over 30?

4

5                    MR. ANDRES: Yes.

6                    ZC CHAIR HOOD: Okay.

7                    MR. ANDRES: And the management of  
8                    the, excuse me, residential move-ins and the  
9                    retail activity would be managed.

10                  ZC CHAIR HOOD: Okay.

11                  MR. ANDRES: Consistent with other  
12                  mixed-use developments in this --

13                  ZC CHAIR HOOD: Okay. Good. Same  
14                  questions. Same answers. Thank you.

15                  MR. ANDRES: All right.

16                  ZC CHAIR HOOD: Thank you, Madam  
17                  Chair.

18                  VICE CHAIRPERSON SORG: Thank you,  
19                  Mr. Hood. I'm sorry. I didn't mean to skip  
20                  over any portions that you wanted to hear at  
21                  all.

22                  Any other questions for the

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1                   Applicant?

2                   I have a couple.

3                   To Mr. Maisto, can you describe the  
4                   materials that are currently being proposed?

5                   I'm looking at A501. I'm curious. Looks like  
6                   maybe metal panel. We didn't receive any  
7                   renderings --

8                   MS. BROWN: Madam Chair, if I can  
9                   interject while he's finding his stuff.

10                  VICE CHAIRPERSON SORG: I know it's  
11                  in flood.

12                  MS. BROWN: We are doing a major  
13                  redesign of the exterior elements so that what  
14                  we submitted is out of date.

15                  VICE CHAIRPERSON SORG: Sure.

16                  MS. BROWN: And we do have  
17                  supplemental drawings that emphasize the  
18                  verticality of the building that are not in this  
19                  record, but we will be presenting to the Historic  
20                  Preservation Review Board and so, we will be  
21                  asking for flexibility to make those changes  
22                  to the building so that we can follow through

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1 on the design.

2 VICE CHAIRPERSON SORG: So, with  
3 regard to the -- I understand that and you've  
4 made that clear certainly in your application,  
5 but with regard to what we have seen here, the  
6 concept is or materials?

7 MR. MAISTO: The ground floor store  
8 front with some solid panels. The upper levels  
9 are essentially combined window walls with metal  
10 cladding of some sort. Either a vertical or  
11 a horizontal. We're still --

12 VICE CHAIRPERSON SORG: I mean it  
13 is a metal panel.

14 MR. MAISTO: It is a metal panel.  
15 Yes.

16 VICE CHAIRPERSON SORG: Okay.

17 And then on the other faces? The  
18 rear face of the facade.

19 MR. MAISTO: That would be brick.

20 VICE CHAIRPERSON SORG: Um-hum.

21 MR. MAISTO: And on the 8th Street  
22 facade, there's this section of masonry brick

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1 massing with the -- kind of a steel paneled super  
2 structure behind.

3 VICE CHAIRPERSON SORG: Um-hum.

4 MR. MAISTO: And that, as we've  
5 discussed with HPRB, starts to, you know, defer  
6 to the neighboring buildings to the south.

7 VICE CHAIRPERSON SORG: Okay.

8 Thank you for entertaining something I don't  
9 have you changing.

10 I guess to Ms. Jezienicki. I wanted  
11 to hear a little bit more about the building  
12 program, the unit mix. What are the -- we've  
13 heard from Mr. Andres primarily one bedrooms  
14 and studios. But, can you talk about how many  
15 of each and also your range of square feet?

16 MS. JEZIENICKI: Sure. I'm asking  
17 John to pass the plans.

18 So, as Carolyn and Mr. Andres had  
19 mentioned, the units on average are smaller.  
20 Just over 700 square feet each. So, with a total  
21 of 95 units, the percentages which John is  
22 grabbing. So, 20 studio units, 59 one-bedroom

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1                   units and 12 two-bedroom units.

2                   Which would change drastically if  
3                   we accommodated the 80 percent lot occupancy.

4                   That's when we have a 90 percent increase in  
5                   studios and one bedrooms and two bedrooms  
6                   decrease. So, in general, the average unit is  
7                   about 700 square feet and tends to be a  
8                   studio/one bed in that range.

9                   VICE CHAIRPERSON SORG: Okay. And  
10                  is it intended as rental or condominium?

11                  MS. JEZIENICKI: Yes.

12                  VICE CHAIRPERSON SORG: Okay.

13                  MS. JEZIENICKI: Um-hum.

14                  VICE CHAIRPERSON SORG: I have no  
15                  other questions. Any other Board Members? No.  
16                  Okay.

17                  Then let us move to the Office of  
18                  Planning please.

19                  MR. GOLDSTEIN: Good afternoon,  
20                  Madam Chair.

21                  For the record, my name is Paul  
22                  Goldstein with the Office of Planning.

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1                   As you've heard, the Applicant has  
2 requested several areas of variance relief and  
3 special exception relief to accommodate this  
4 new six-story mixed-used building at 710 Florida  
5 Avenue.

6                   The OP report I think went into some  
7 detail about a number of these areas. I don't  
8 know if it's needed that I repeat it. I can  
9 certainly answer any questions.

10                  VICE CHAIRPERSON SORG: I think you  
11 know what we want to hear about.

12                  MR. GOLDSTEIN: What's that?

13                  VICE CHAIRPERSON SORG: I think you  
14 know what we want to hear about.

15                  MR. GOLDSTEIN: Yes. Yes, I'm  
16 getting there. To the lot occupancy. I just  
17 had to prep until I get there.

18                  VICE                    CHAIRPERSON           SORG:  
19                  Absolutely. It is perfectly fine.

20                  MR. GOLDSTEIN: So, I -- I think --  
21                  the rear yard, parking, loading, special  
22                  exceptions for roof structure, streetscape, I

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1 think they've been all addressed and OP is  
2 supportive of the requested relief there.

3                   Regarding the lot occupancy, in the  
4 lead up to our report, we just didn't feel like  
5 the case had quite been pushed far enough. We  
6 had heard some -- seen some information about  
7 cost which are reasonable. I mean it's clear  
8 that this site has its constraints with the  
9 subway tunnels in addition to the intention to  
10 set back more from Florida Avenue to create a  
11 wider sidewalk.

12                   We just at that time did not feel  
13 there was enough connection to the lot occupancy  
14 relief being made. That's what our report was  
15 flagging and that's what we were intending the  
16 Applicant to present more testimony on.

17                   Today, I think we've heard enough  
18 testimony to make us feel comfortable for it.  
19                   Certainly there are a confluence of factors  
20 affecting this site. The setback on Florida,  
21 the WMATA tunnels, the diagram that included  
22 the impact on the double-loaded corridor and

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1 the reduction of unit size and the loss of square  
2 footage that can be achieved under zoning. I  
3 think there's enough there that we feel the lot  
4 occupancy relief is warranted in this case, but  
5 we wanted the Applicant to push that further  
6 and I think they've responded to our request.

7 Beyond that, the Applicant has said  
8 that they're still proceeding through HP. So,  
9 I guess some of the design may ultimately look  
10 a little bit different and I think that's about  
11 it for my report.

12 I'm happy to answer any questions  
13 you may have.

14 VICE CHAIRPERSON SORG: Thank you  
15 very much, Mr. Goldstein.

16 Do Board Members have questions for  
17 the Office of Planning?

18 Seeing none, does the Applicant, I'm  
19 sorry, have questions for the --

20 MS. BROWN: No questions.

21 VICE CHAIRPERSON SORG: Okay. And  
22 I think we have someone here from DDOT. Hi.

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1                   MR. BOOKER: My name is Lewis Booker  
2 representing DDOT.

3                   We submitted a report in support of  
4 the application on June 29th and I think that  
5 the testimony today went into pretty much  
6 extensive detail on why there special exceptions  
7 and variances were necessary.

8                   Is there any further information you  
9 would require from me?

10                  I guess I ought to state for the  
11 record we worked very closely with the  
12 Applicant. The prepared a traffic impact study  
13 in compliance with our scoping arrangement and  
14 we feel the streetwall setback is necessary for  
15 pedestrian activity and the loading arrangement  
16 keeps trucks off of the street. So, they make  
17 all maneuvers on private property which is one  
18 of our major concerns.

19                  ZC CHAIR HOOD: So, let me just ask.  
20                  How favorable will DDOT be if a truck comes  
21 over the 30-foot threshold and needing to apply  
22 for a permit to block off some space in the

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1 street? Is DDOT favorable? Will be favorable?

2 MR. BOOKER: It's allowable and I  
3 think Mr. Andres stated that they would have  
4 to obtain a permit from DDOT and probably do  
5 that on off-peak hours, preferably at night and  
6 one of the things they have -- one of the  
7 requirements is they have to have a  
8 transportation management plan and loading plan  
9 for both uses because it's -- you're going to  
10 have service and residential vehicles arriving.

11 So, they're going to have to closely manage  
12 that space.

13 But, we would be acceptable to work  
14 with the trucks.

15 ZC CHAIR HOOD: Okay. Thank you.

16 VICE CHAIRPERSON SORG: Did you  
17 have additional questions? No.

18 One question to Mr. Booker, in the  
19 TDM measures that the Applicant put forward and  
20 I'm reading them in their prehearing statement,  
21 I believe those would have been the same things,  
22 one of the things that you indicate in your

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1 recommendation is complementary SmarTrip card  
2 of \$100 Metro fare for each retail employee.

3 I don't believe that's something  
4 that is in the Applicant's TDM plan. How  
5 important is that to DDOT in the scheme of the  
6 overall TDM plan?

7 MR. BOOKER: I would say it's fairly  
8 important. However, the Applicant has complied  
9 with most of our TDM requirements. Given the  
10 scale and the size and activity at this site,  
11 this would be a little bit beyond and above what  
12 they're required to do.

13 VICE CHAIRPERSON SORG: Okay. And  
14 can you please comment on the parking reduction  
15 just briefly?

16 MR. BOOKER: Well, yes, the site is  
17 very close to a Metro station and we feel that  
18 its parking reduction is acceptable for this  
19 location for this area, but we would encourage  
20 that they mitigate the vehicle trips by  
21 providing some SmarTrip relief for employees.

22 VICE CHAIRPERSON SORG: Okay.

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1                   Does the Applicant have questions for DDOT?

2                   MS. BROWN: No, Madam Chair.

3                   VICE CHAIRPERSON SORG: And any  
4 addition, I'm sorry, Board questions for our  
5 DDOT representative? No. Okay.

6                   Seeing none, thank you very much,  
7 Mr. Booker.

8                   Now, we will move to note for the  
9 record that we did receive today a letter from  
10 the ANC in which the property is located.  
11 That's ANC 1B. Who has voted 7-0 to support  
12 the application and from my review, this letter  
13 does meet our requirements for great weight.

14                   Additional letters of support have  
15 come from the Councilmember for the Ward,  
16 Councilmember Jim Graham. That is also a  
17 recommendation that will receive great weight  
18 as well as I will mention support from the U  
19 Street Neighborhood Association.

20                   Now, we will move to any parties and  
21 persons in support of the application who wish  
22 to testify.

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1                   Seeing none, we will move to hear  
2 from any parties and persons in opposition who  
3 wish to testify and if you'd like to come forward  
4 to the table which has been vacated for your  
5 and you can once you are ready go ahead and  
6 introduce yourself for the record.

7                   MS. GLAZER: Madam Chair.

8                   VICE CHAIRPERSON SORG: Yes.

9                   MS. GLAZER: Did the Board need to  
10 waive the rules to accept the late ANC report?

11                  VICE CHAIRPERSON SORG: Oh, thank  
12 you for indicating that. Yes, I believe the  
13 Board will waive our requirements and accept  
14 the ANC report and give it great weight as it's  
15 due.

16                  Now that you've seated yourself, if  
17 you can please introduce yourself for the record  
18 stating your name and your home address please.

19                  MS. JACKSON: Okay. My name is  
20 Dana Jackson. My home address is 4700 Blagden  
21 Avenue, N.W., Washington, D.C. zip 20011.

22                  And I'm here today representing the

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1                   9th Street Property Owners in Square 393.

2                   I did --

3                   VICE CHAIRPERSON SORG: I don't  
4                   want to interrupt you. I'm sorry. But, what  
5                   we're going to do is we're going to when the --  
6                   I'll just have the Secretary get back to his  
7                   seat and for your testimony, we're just going  
8                   to put the three minutes on the clock so that  
9                   we can make sure that we're moving the  
10                  proceedings efficiently. Okay.

11                  Thank you. Please go ahead with  
12                  your testimony. Oops, I think your mike is just  
13                  off.

14                  MS. JACKSON: Is it on?

15                  VICE CHAIRPERSON SORG: You got it.

16                  MS. JACKSON: Okay. All right.

17                  Thank you.

18                  In light of your points earlier, I  
19                  would just sort of quickly go through the high  
20                  points.

21                  Our first point as relates to our  
22                  opposition is the project does not comply with

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1 the Duke Plan. The Duke Plan states the design  
2 should address the need of signature architect  
3 that adheres to the massing and scale of that  
4 area and in our case, this not fit in. The  
5 placement to us of a two six-story -- a one  
6 six-story, excuse me, modernistic wavy-glass  
7 structure with a box roof does not comply with  
8 what we consider to be the terms of the Duke  
9 Plan.

10                   And we also are equally concerned  
11 with the height and traffic congestion and  
12 impede -- and the fact that this will also impede  
13 the commercial operation of the Florida Avenue,  
14 9th and 7th Street business corridor.

15                   Our position is that the proposed  
16 building is incompatible with surrounding  
17 historic structures within the greater U Street  
18 Historic District and the sheer size of the  
19 building would adversely impact the character  
20 of the neighborhood.

21                   And our position is that through the  
22 design and reduction in the height and density

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1 on the east site that this would serve to negate  
2 the need for the requested approvals for the  
3 BZA variances or at least most of them. Such  
4 as one that has been discussed quite extensively  
5 which is the elimination of the 55-foot loading  
6 berth.

7                   We recommend that this building be  
8 no more than four-and-a-half stories in height  
9 and we feel that this would make it in compliance  
10 with the Duke plan.

11                   A quick note about the HPRB's May  
12 31st vote. They did not approve the revised  
13 design and construction drawings and we felt  
14 that Holland & Knight's, excuse me, statement  
15 at the bottom of their June 26 application was  
16 misleading and the fact that they are still under  
17 review to get approval of the design.

18                   In terms of community outreach, we  
19 did have various meetings with JBG and the one  
20 point that we wanted to make was that we have  
21 continuously offered them recommended changes  
22 and we have been ignored and JBG seems to be

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1 committed to maximizing the total development  
2 of the site and without compromise.

3 Two things that we wanted to mention  
4 in terms of burden of proof and that has to do  
5 with affordable housing. The Duke Plan speaks  
6 to 30 percent affordable housing and we were  
7 saying at least the minimum of 20 percent should  
8 be addressed.

9 In terms of the transportation  
10 study, we felt that had some detrimental impact  
11 on the traffic patterns in the area. You know,  
12 8th Street is a two-way residential street.  
13 T Street going east is one way and then you have  
14 the commercial corridors of Florida, 7th and  
15 8th, 9th Street. Excuse me. So, we saw that  
16 as a negative impact.

17 Again, since I'm sort of limited in  
18 time, again, the affordable housing, the traffic  
19 patterns are our two major concerns as it relates  
20 to the east site and the fact that we feel that  
21 if they reduce the size and the density of that  
22 development, then several of the variances won't

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1 be necessary.

2 Thank you.

3 VICE CHAIRPERSON SORG: Thank you  
4 very much, Ms. Jackson. We appreciate your  
5 testimony and also your laying out the thoughts  
6 of you and your other constituents in writing.

7 It's helpful to us.

8 MS. JACKSON: Okay.

9 VICE CHAIRPERSON SORG: I wanted to  
10 ask you. One of the things that you mentioned  
11 in your testimony, and we'll also open it up  
12 to the Board questions, you mentioned that you  
13 believed that this development would impede  
14 commercial operation on 8th Street and 9th  
15 Street.

16 You're a business owner in the area?

17 MS. JACKSON: We have a commercial  
18 property in the area. One of the  
19 representatives of the business that is in  
20 operation --

21 VICE CHAIRPERSON SORG: Okay.

22 MS. JACKSON: -- is also present.

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1                   But, we do have a tenant who is a  
2 commercial business and all the other property  
3 owners primarily in our corridor operate  
4 commercial businesses in their properties.

5                   VICE CHAIRPERSON SORG: So, how do  
6 you feel that or your tenants or the other folks  
7 that you've spoken to who feel a certain  
8 opposition here, how do you feel that they --  
9 can you characterize how they feel that their  
10 commercial operations would be detrimentally  
11 affected by the approval of the variances and  
12 the special exceptions that we're talking about  
13 here today?

14                   MS. JACKSON: Well, I think --

15                   VICE CHAIRPERSON SORG: Or the  
16 project itself as --

17                   MS. JACKSON: In terms of the  
18 project, the fact that you're separating the  
19 west from the east. Our primary concern had  
20 to be more with the west in light of the alley  
21 closing and the impact it would have.

22                   But, one of the things that has been

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1       noted just with the recent opening of the Howard  
2       Theater, the traffic has really been impacted  
3       in terms of congestion, places to park and trying  
4       to operate businesses and have places for people  
5       who want to frequent your businesses. You know,  
6       that has been impacted tremendously.

7               And, you know, I think you might have  
8       a management plan to deal with the traffic flow,  
9       et cetera and say that there won't be any trucks  
10      coming through, you know, above 30 feet if you  
11      will, but to try and manage all that and with  
12      8th Street being two-way residential. You  
13      know, one way and as I mentioned T Street is  
14      one way going in the direction of 7th from 9th  
15      Street as an example. So, already we're seeing  
16      a major impact in terms of traffic congestion.

17               And even though the pattern was  
18      mentioned in the transportation impact study  
19      that 9th Street is a minor artillery -- artery  
20      going down from Sherman area to downtown, we  
21      find that it's more heavily traveled than 7th  
22      Street. Because 7th Street, you have a bus

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1 line. Ninth Street, we don't and then with the  
2 new development that's opening on 7th that's  
3 adjacent to Howard, just the level of activity  
4 especially at night.

5 VICE CHAIRPERSON SORG: Generally  
6 speaking, then you're indicating that it's  
7 traffic. I mean I will take your point  
8 regarding some of the comments on the degree  
9 of use of 9th Street. It turns out I'm actually  
10 personally very familiar with this particular  
11 area and so, I understand the conditions that  
12 you're talking about very clearly.

13 MS. JACKSON: Um-hum.

14 VICE CHAIRPERSON SORG: I  
15 experience them, in fact, everyday.

16 So, but the other question that I  
17 would ask you is those folks that you've spoken  
18 to, and clearly, you're speaking a lot in  
19 opposition to this project, the businesses that  
20 are associated with your views, do most of their  
21 customers or clients come on foot or by car to  
22 frequent their businesses on 9th Street?

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1                   MS. JACKSON: It's a combination,  
2 but there's a heavy influx by car.

3                   VICE CHAIRPERSON SORG: Okay.  
4 Thank you.

5                   MS. JACKSON: And both day and  
6 night.

7                   VICE CHAIRPERSON SORG: And night.  
8 Okay.

9                   MS. JACKSON: So, it's ongoing.  
10                  VICE CHAIRPERSON SORG: Do other  
11 Board Members have questions for our witness  
12 testifying here? Okay.

13                  ZC CHAIR HOOD: Yes, Madam Chair.

14                  I think I've heard of the Duke Plan.  
15                  Here plans in this city, the plans run into  
16 each other and I know there are certain things  
17 that we have to deal with here on the BZA as  
18 well as the Zoning Commission as far as plans  
19 are concerned.

20                  And I'm just curious. Was the Duke  
21 Plan part of the -- I heard about it I think  
22 some years ago. Was that the plan that

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1 encompasses the Howard University? I mean the  
2 theater, the revamping of that whole  
3 neighborhood there?

4 MS. JACKSON: Exactly.

5 ZC CHAIR HOOD: Okay. Okay.

6 MS. JACKSON: And the area in which  
7 this particular project is located is in the  
8 9th Street Subdistrict of the Duke Plan and also  
9 the property is within the boundaries of the  
10 U Street Historic District.

11 So, those two elements were at the  
12 forefront in terms of what was going to be on  
13 the that avenue if you say Florida Avenue  
14 connecting U Street to Florida from Lincoln  
15 Theater down to Howard and so, the architectural  
16 design that was envisioned for the project area  
17 that we're discussing today was to be one that  
18 was more to fit in.

19 I'm sure there's a gap I mean and  
20 -- but, the issue is you just don't fill in a  
21 gap with something that doesn't necessarily fit  
22 in and we're just trying to maintain the historic

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1 character and architectural style of that  
2 particular area. So, that when you flow from  
3 U Street to Florida and it's -- you know, as  
4 they say in the Duke Plan, a string of pearls  
5 on a string. So, that the high point at the  
6 western end is the Lincoln Theater and at the  
7 eastern end is the Howard Theater.

8 ZC CHAIR HOOD: Who helped develop  
9 the Duke Plan?

10 MS. JACKSON: Well, the Duke Plan  
11 was developed through a series of meetings with  
12 community participation. The Deputy Mayor's  
13 Office of Planning and Economic Development took  
14 the lead and, of course, in 2005, the Duke Plan  
15 through resolution was approved by the D.C. City  
16 Council. So, it is something that is still  
17 adhered to in terms of what goes on within that  
18 area and then also, as a companion to that, the  
19 fact that this property is located in the U  
20 Street Historic District.

21 So, we're just trying to maintain  
22 the culture of the area especially from African

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1                   American standpoint in terms of that particular  
2                   area. So, that's one of the reasons why we're  
3                   really focused on what's really built.

4                   And the massing issue has been  
5                   something that has come up in terms of just  
6                   putting something that large. That project as  
7                   an example without precluding the other one,  
8                   but it just -- it doesn't fit.

9                   In fact, in the Duke Plan, there was  
10                   a recommendation of a series of structures that  
11                   could be considered and that the community along  
12                   with the City agencies passed on and one we  
13                   included in our presentation was on page 41 or  
14                   40. It's a building in Boston which is about  
15                   we consider four or four-and-a-half stories.

16                   So, our position was that if  
17                   something was four-and-a-half stories in height  
18                   and had more of an architectural flavor for the  
19                   area itself, then that's something that, you  
20                   know, we could -- we could accept.

21                   ZC CHAIR HOOD: I think you bring  
22                   up some good points. I'm not sure whether all

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1           that jurisdiction is on this Board, but I think  
2           you bring up some great points.

3           And I'm very concerned about going  
4           against that plan which the neighborhood helped  
5           put together and I know there are a thousand  
6           plans out there. I've been around here long  
7           enough to see the Comprehensive Plan. I  
8           understand all that, but I think when you have  
9           a group of people who -- organization which also  
10          approve -- the organizations that approve and  
11          deal with something that's approved by the  
12          Council, I think that's important to me.

13          And I would just like to know from  
14          Office of Planning, Madam Chair, and also to  
15          the Applicant, was the Duke Plan considered as  
16          we move forward?

17          And I know about HPRB. I don't want  
18          to hear about HPRB and we got to go back.

19          I just want to know was this plan  
20          considered when this Applicant came into this  
21          neighborhood and this Applicant -- and Office  
22          of Planning as well as the Applicant take into

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1 consideration if there was a plan already  
2 developed and this should kind of coincide with  
3 that whole development.

4 I remember this because the Zoning  
5 Commission some years ago started out with  
6 something. It didn't go through, but I remember  
7 hearing the Duke Plan.

8 So, those are my concerns, Madam  
9 Chair.

10 VICE CHAIRPERSON SORG: Thank you,  
11 Mr. Hood.

12 Actually, I agree with you and one  
13 of the questions that I wanted to ask, and I  
14 thought that perhaps one of the appropriate  
15 people to ask would be Mr. Sher who's just walked  
16 out of the room, is my concern in that regard.

17

18 Generally speaking, obviously, as  
19 we all know, the BZA has not a great deal to  
20 say with regard to design, but what we find here  
21 is a project that is within the Uptown Arts  
22 Overlay District which does give us a degree

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1 of -- especially with regard to 1906.1, does  
2 give us a degree of understanding, comment,  
3 let's say, on design and my question I think  
4 which -- in which I would echo your comments  
5 has to do with to what extent the Board can or  
6 ought to consider the Duke Plan in terms of sort  
7 of along with -- whether or if the Board can  
8 consider elements of the Duke Plan as in tandem  
9 with, you know, the Arts Overlay language or  
10 whether it's something that's outside of our  
11 jurisdiction to think about.

12 ZC CHAIR HOOD: Well, I would like  
13 to -- while I appreciate Mr. Sher telling --

14 VICE CHAIRPERSON SORG: Well, I  
15 mean --

16 ZC CHAIR HOOD: I'm sure he would  
17 be able to make it sound so good for me that  
18 I'll believe it.

19 I would really like for time for our  
20 Office of Attorney General to look into that  
21 as well as the Office of Planning.

22 I guess Mr. Goldstein may be -- he

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1 may be able to tell me in his analysis if he's  
2 taken into consideration the Duke Plan.

3 MR. GOLDSTEIN: Well, OP is  
4 certainly aware of the plan, but the plan itself  
5 isn't -- I mean the zoning can't be incompatible  
6 with the plan. So, you know, if they meet the  
7 zoning considerations and they get relief from  
8 the zoning, the plan itself is not  
9 self-enforcing. It had a lot of  
10 recommendations in it.

11 If OAG has anything they'd like to  
12 add to that, I'm happy to hear from them.

13 I know you also don't want to hear  
14 about HPRB, but there is a lot of historic review  
15 of the design and how it is or isn't compatible  
16 going on.

17 VICE CHAIRPERSON SORG: Does OAG  
18 have a comment or I --

19 MS. GLAZER: I mean I agree with  
20 what Mr. Goldstein said, but I would certainly  
21 want to look into this further to give you an  
22 opinion that's more informed.

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1                   That doesn't mean that the Board  
2 can't look at the overlay requirements and some  
3 of those overlay requirements may be consistent  
4 with the Duke Plan.

5                   VICE CHAIRPERSON SORG: I think I  
6 agree and I think Chairman Hood makes a very  
7 good suggestion.

8                   I think what we would like to hear  
9 from perhaps OAG as well as the Office of  
10 Planning in advance of our deliberations on this  
11 case, which will not be today, is an opinion  
12 about the interaction, if any, between the  
13 zoning considerations and the Duke Plan as it  
14 relates to this application.

15                   Would that satisfy your curiosity,  
16 Mr. Hood?

17                   ZC CHAIR HOOD: Well, it's not even  
18 just this case. It's just so many plans.

19                   VICE CHAIRPERSON SORG: No, I  
20 totally agree with you.

21                   ZC CHAIR HOOD: Yes.

22                   VICE CHAIRPERSON SORG: I

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1 definitely agreement. If you live in the City  
2 long enough and the many plans for many, many  
3 areas.

4                   Okay. So, we will hold that  
5 question and move on from it with regard to our  
6 deliberations.

7                   Do Board Members have any other  
8 questions for Ms. Jackson? Ms. MacMurray.

9                   MEMBER MacMURRAY: Madam Chair, I  
10 just wanted to thank her for coming to testify  
11 today and sharing her thoughts on -- or coming  
12 to testify in opposition and sharing her  
13 thoughts on the matter.

14                   We do really appreciate when the  
15 public has an opinion to share that keeps us  
16 informed.

17                   MS. JACKSON: Thank you so much.  
18 I appreciate that.

19                   VICE CHAIRPERSON SORG: Thank you,  
20 Ms. MacMurray.

21                   Does the Applicant have any  
22 questions for Ms. Jackson?

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1                   MS. BROWN: No questions.  
2                   VICE     CHAIRPERSON   SORG:        No  
3                   questions. Okay. Then thank you very much for  
4                   coming down and we appreciate as Ms. MacMurray  
5                   said, I'll echo, appreciate your comments and  
6                   I appreciate also your willingness to speak  
7                   within the limitations that I described. So,  
8                   thank you for that.

9                   And are there any other questions  
10                  that's come up from Board Members for the  
11                  Applicant or any of the folks that we've heard  
12                  from today?

13                  Okay. Seeing none, if you would  
14                  like to make any closing statements.

15                  MS. BROWN: Yes, thank you, Madam  
16                  Chair.

17                  Mr. Hood, we would like to address  
18                  briefly what we believe is the correlation of  
19                  the Duke Plan with the BZA process.

20                  We agree with Mr. Goldstein that  
21                  they're guiding principles and they seem to have  
22                  more influence on the Zoning Commission process

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1 than they do the BZA process. The BZA, we're  
2 just here strictly for special exception relief  
3 and variance and we can only look to the  
4 regulations to guide us in that.

5 Having said that, this project was  
6 developed to be in conformance with the Duke  
7 Plan and specifically, we've met with the Office  
8 of Planning and examined the Duke Plan to make  
9 sure that it was in full conformance.

10 So, if you were to look at the Duke  
11 Plan, you would see renderings in there of  
12 seven-story buildings on these sites because  
13 that was the initial intention that this should  
14 very much be high-density development on the  
15 site. This now is only proposing six stories  
16 keeping it with the 70-foot height limit that  
17 is all that we can achieve under the present  
18 Zoning Regulations.

19 Under the Arts Overlay, as you know,  
20 it refers us to the Historic Preservation Review  
21 Board for design guidance as well. So, we have  
22 been working very closely with them on that.

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1       So, we are in conformance with the Arts Overlay  
2       requirements on that regard.

3                   And let's see what else we wanted  
4       to mention. With respect to the Historic  
5       Preservation Review Board, I think you've heard  
6       two different views on what happened at the HPRB  
7       meeting on May 31st and I can briefly read to  
8       you from the transcript. This is at the end  
9       of the meeting with the Chairman reporting.

10                  Saying "Overall what I hear from the  
11       Board and I agree, there isn't an issue with  
12       the scale or the height. It's more the design  
13       solution that is externally presenting itself  
14       for solution."

15                  So, that was where we left it. So,  
16       we're working on the exterior design, but the  
17       scale and height have already been approved by  
18       the HPRB.

19                  In closing, I think that we have  
20       demonstrated that we've met the standards, the  
21       burden of proof for the variance relief and  
22       special exception relief and we would ask that

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1 you approve our applications with the following  
2 conditions.

3 Number one, the TDM measures found  
4 on page 20 of our prehearing statement.

5 Number two, that we will install --  
6 the Applicant will install a traffic signal and  
7 in light of that, we don't feel that it's  
8 necessary to do the SmarTrip cards.

9 And then three, flexibility from the  
10 design of the building in accordance with HPRB  
11 review so long as no additional areas of relief  
12 are created.

13 And that concludes our testimony.

14 If anybody has any questions, we would be happy  
15 to answer them.

16 MEMBER MacMURRAY: Ms. Brown, can  
17 you just repeat the first item that you concluded  
18 with?

19 MS. BROWN: The TDM, the  
20 Transportation Demand Mitigation measures, on  
21 page 20 of our prehearing submission and I'd  
22 be happy to read through them, but if you've

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1       got the book, you can see them all listed there,  
2       too.

3                    MEMBER MacMURRAY: Thank you.

4                    MS. BROWN: They're pretty lengthy.

5                    MEMBER MacMURRAY: Thank you.

6                    MS. BROWN: Um-hum.

7                    VICE CHAIRPERSON SORG: All right.

8        Thank you very much, Ms. Brown. I appreciate  
9        it and thank you to everybody who came down to  
10      testify today for this case.

11                  What we will do now is we will close  
12      this hearing and with the exception of opinions  
13      to be generated from the Office of the Attorney  
14      General and a supplemental report from the  
15      Office of Planning regarding the questions that  
16      were stated before on the record regarding the  
17      Duke Plan, the Overlay language and the zoning  
18      relief that's requested.

19                  MS. GLAZER: Madam Chair.

20                  VICE CHAIRPERSON SORG: Yes.

21                  MS. GLAZER: Does the Board want to  
22      consider allowing the Applicant to make a

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1 submission as well?

2 VICE CHAIRPERSON SORG: Yes.

3 Thank you.

4 As well as any submissions or  
5 responses from the Applicant in that regard and

6 --

7 MS. GLAZER: Or and all.

8 VICE CHAIRPERSON SORG: And all  
9 interested parties. Yes.

10 MS. GLAZER: So, the persons  
11 testifying in opposition. They're not parties.

12 VICE CHAIRPERSON SORG: Persons.  
13 Persons.

14 MS. GLAZER: Person who --

15 VICE CHAIRPERSON SORG:  
16 Individuals --

17 MS. GLAZER: -- persons who --

18 VICE CHAIRPERSON SORG: -- who  
19 testified today at this hearing.

20 Thank you very much. Very careful  
21 with our language.

22 So, that being said, hopefully

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1 everyone is at this point clear on what we will  
2 be looking for and then we will set this case  
3 for a decision I believe and Mr. Secretary, you  
4 tell me if this good for everybody, but I would  
5 set this the morning on July 31st.

6                   Does that give everybody enough time  
7 to respond with any desired --

8                   MS. BROWN: Yes, Madam Chair.

9                   VICE CHAIRPERSON SORG: I'm hearing  
10 -- I'm seeing nodding and Office of Planning,  
11 yes? Affirmative?

12                   MR. GOLDSTEIN: Affirmative. I  
13 just want to clarify the date that you need the  
14 report by.

15                   VICE CHAIRPERSON SORG: What we  
16 will look at here is looking at the 31st.

17                   SECRETARY MOY: If I may jump in?

18                   VICE CHAIRPERSON SORG: Yes,  
19 certainly.

20                   SECRETARY MOY: Because of the  
21 reasonable -- the speed that the Board staff  
22 has been getting materials to the Board, at least

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1 by Wednesday, July 25th. That would be  
2 preferable. Of course, if you want to push the  
3 date back, then, of course, staff will abide  
4 by the desires of the Board.

5 VICE CHAIRPERSON SORG: I'd really  
6 like to have things by Tuesday the 24th.

7 SECRETARY MOY: Perfect. It's  
8 great for us.

9 VICE CHAIRPERSON SORG: Does that  
10 work for everybody? Yes. Okay. OAG? Yes?  
11 Okay. Yes.

12 MR. GOLDSTEIN: Yes. Yes, it does.  
13 I'm sorry. I would like a little bit more  
14 guidance to exactly what it is you need if you  
15 don't mind.

16 VICE CHAIRPERSON SORG: Sure.

17 MR. GOLDSTEIN: It's the interplay  
18 of how the plan should be considered in light  
19 of the zoning on the site. Is that --

20 VICE CHAIRPERSON SORG: You got it.

21 MR. GOLDSTEIN: Okay.

22 VICE CHAIRPERSON SORG: Mr. Hood,

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1 do you agree?

2 ZC CHAIR HOOD: Yes, that'll be  
3 fine. Also, you mentioned something else, too.

4 Taking --

5 VICE CHAIRPERSON SORG: I'd like to  
6 also -- the interplay about all of those relevant  
7 zoning areas along with the Duke Plan in  
8 considering the relief that's being requested  
9 here.

10 ZC CHAIR HOOD: Madam Chair, can I  
11 just ask and I know I'm -- I can always send  
12 a proxy, but I would like to be here for this  
13 discussion and on the 31st, I have something  
14 else at 2:00 and I don't want to mess anybody  
15 else's schedule up. We couldn't do this on the  
16 24th?

17 VICE CHAIRPERSON SORG: Well --

18 ZC CHAIR HOOD: That's no enough  
19 time?

20 VICE CHAIRPERSON SORG: -- I would  
21 actually love to do it on the 24th.

22 ZC CHAIR HOOD: I mean if that's

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1                   messing up somebody's time. Then I mean --

2                   VICE CHAIRPERSON SORG: Well, no,  
3 I mean I appreciate your suggestion because I,  
4 too, would like to be here for the deliberations  
5 and unfortunately, will be out also on the 31st.

6                   ZC CHAIR HOOD: Yes.

7                   VICE CHAIRPERSON SORG: So, now  
8 that we've opened that can of worms, let's go  
9 back to the part -- to everybody that we've  
10 spoken to now and see whether or not we can get  
11 any of the requested documentation in. So, if  
12 we're talking about Tuesday the 24th, let's give  
13 until -- in this case, how about Friday the 20th  
14 for a deadline for any submissions?

15                   MS. BROWN: That works for the  
16 Applicant, Madam Chair.

17                   VICE CHAIRPERSON SORG: Okay.  
18 Thank you. I see nodding from the audience.  
19 Mr. Goldstein, yes? And OAG, I think yes.  
20 Okay. Maybe hopefully.

21                   Okay. So, now that we've set our  
22 deadlines and so, then we will consider this

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1           actually in -- yes, in the morning on July 24th.

2           Okay.

3           All right. Thank you very much,  
4 everybody.

5           MS. BROWN: Thank you.

6           VICE CHAIRPERSON SORG: And that  
7 concludes this public hearing of the Board of  
8 Zoning Adjustment.

9           (Whereupon, at 3:02 p.m., the  
10 hearing was adjourned.)

11

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