

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 4th 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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T-A-B-L-E O-F C-O-N-T-E-N-T=S

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

1:18 p.m.

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

We are located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W.

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

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

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

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.

12 Madam Chair, Members of the Board,
13 just note for the record that -- for the Board
14 to address there is no affidavit or posting on
15 file being the first and staff would suggest
16 that there be some clarity as to the relief
17 that's being sought.

18 That concludes the Staff's
19 briefing, Madam Chair.

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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1 The next and last application before
2 the Board is Application No. 18375. This is
3 the application of Florida Avenue Residential
4 LLC pursuant to 11 DCMR 3103.2 and 3104.1 for
5 variance from the required standards for rear
6 yard requirements Section 774, lot occupancy
7 requirements Section 772, off-street parking
8 requirements Section 2101 and loading
9 facilities requirements Section 2201 and
10 special exception relief pursuant to Section
11 1906 from the streetwall requirements under
12 Subsection 1903.3 and the rood structure
13 requirements under Subsection 770.6. All this
14 to allow the development of a six-story
15 mixed-use residential building with ground
16 floor retail/service uses in the Arts/C-2-B
17 District at premises 710 Florida Avenue, N.W.
18 Property located in Square 416, Lot 31.

19 Madam Chair, just for the record,
20 their, I believe, revised plans which I believe
21 is under cover Exhibit 25, yes, dated June 26,
22 2012 and note in the record that there are no

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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 is 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.

9 These include 150 percent premium
10 unsupported excavation, construction costs,
11 unique building foundation design, specialized
12 engineering analyses and consultant fees, daily
13 seismic monitoring of the tunnels during
14 construction, a two-month delay to our
15 construction schedule as anticipated by our
16 general contractor, inability to locate loading
17 trash back of house operations in the below grade
18 garage given it's only one level which displaces
19 rentable retail area on the ground floor and
20 the requirement to accommodate the loading on
21 the street level. Plus the accommodations for
22 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.

2 The site is irregularly shaped and
3 is constrained by two street frontages on the
4 west and the north. It is 100 percent lot
5 coverage on the ground floor based on the
6 coverage of the overhanging floors above. The
7 upper floors vary between 90 percent and down
8 to 79.6 percent. You'll see that a little later
9 on.

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.

14 This slide here shows the
15 constraints of the WMATA infrastructure on the
16 site. The light gray shading are the two Metro
17 tunnels that are approximately 27 feet below
18 grade. There's a ten-foot no-build easement
19 all around the tunnels indicated by the red dash
20 lines.

21 Of course, you can't see them
22 vertically, but that limits the depth of our

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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.

7 As you can see in these
8 three-dimensional drawings, the building that
9 we're discussing is on the left-hand side of
10 this slide. The fan structure looking from
11 above if you could look through the street is
12 sort of a step down. The tunnels go through
13 the fan structure.

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.

21 Now, a wormseye view as they say
22 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.

20 VICE CHAIRPERSON SORG: Thank you.

21 MR. SHER: Madam Vice Chair and
22 Members of the Board, for the record, my name

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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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