

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

JULY 24, 2012

+ + + + +

The Special Public Meeting
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 9:48 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on July
24, 2012.

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

9:48 a.m.

BZA CHAIR JORDAN: Good morning.

Will the meeting please come to order. We are located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is July 24, 2012. We are here for the public meeting of the Board of Zoning Adjustment for the District of Columbia. My name is Lloyd Jordan, Chairperson. To my left is Nicole Sorg, Vice Chair. To her left is Chairman of the Zoning Commission Anthony Hood. To my right Sashida MacMurray, Board Member. To her right Jeffrey Hinkle, Board Member.

Please be advised this proceeding is being recorded by a court reporter and is also being webcast live. Accordingly, I must ask you to refrain from any disruptive noises or actions in the hearing room.

Today's agenda is to render a decision regarding Case No. 18375. It's on

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1 our public meeting docket for today.

2 Do you have any preliminary
3 issues, Mr. Secretary?

4 MR. MOY: Good morning, Mr.
5 Chairman, members of the Board. On this
6 application for decision before the Board
7 there is, as a matter of fact, one preliminary
8 matter. Should I go onto it now?

9 BZA CHAIR JORDAN: Yes.

10 MR. MOY: I received a post-
11 hearing document from Dana Jackson. As the
12 Board will recall, it was party -- a person
13 rather in opposition, no party status. As
14 this Board is also well aware, the filings had
15 a deadline of Friday, July 20, 2012. I'm in
16 receipt of the document. The staff request
17 the Board give a decision whether or not you
18 want this exhibit into the record or not.

19 BZA CHAIR JORDAN: The record was
20 closed on what date?

21 MR. MOY: The Board set a date of
22 Friday July 20th.

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BZA CHAIR JORDAN: And we received that today?

MR. MOY: Today, this morning, Mr. Chairman.

BZA CHAIR JORDAN: I'm not inclined to accept any additional filings. We are trying to adhere to our filing deadlines on an ongoing basis. It's my thought not to accept any additional filings.

Does the Board have a feeling the other way? That would be the ruling. I think we are well briefed on this matter.

MR. MOY: Very good. Thank you, Mr. Chairman.

BZA CHAIR JORDAN: For the record, I wanted to indicate that I was not here for the hearing. However, I've reviewed the complete record, the hearing, and the recording of the hearing and have reviewed the record so I will be participating in today's decision.

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1 MR. MOY: Very good, sir. With
2 that, should I begin by reading the case?

3 BZA CHAIR JORDAN: Yes, please.

4 MR. MOY: This case for decision
5 is Application No. 18375 of Florida Avenue
6 Residential, LLC, pursuant to 11 DCMR 3103.2
7 and 3104.1, for variances from the required
8 standards for rear yard under section 774; lot
9 occupancy requirements under section 772; off-
10 street parking requirements, section 2101; and
11 loading facilities requirements under section
12 2201.

13 And special exception relief,
14 pursuant to section 1906 from the streetwall
15 requirements under subsection 1903.3, and the
16 roof structure requirements under subsection
17 770.6, to allow the development of a six-
18 story, mixed-use residential building with
19 ground floor retail/service uses in the
20 Arts/C-2-B District at premises 710 Florida
21 Avenue, N.W., property located at Square 416,
22 Lot 31).

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1 As the Board is aware, on July 10,
2 2012, the Board completed public testimony,
3 closed the record, scheduled its decision at
4 a special public decision meeting on July
5 24th.

6 The Board requested supplemental
7 information from the Applicant, the Office of
8 Planning, and Dana Jackson. These filings,
9 Mr. Chairman, are exhibited in your case
10 folders under Exhibit 43, 42, and 41
11 respectively.

12 Please note, sir, that the
13 Applicant's filing under Exhibit 25, page 20,
14 list their proffered conditions which are the
15 nine TDM measures, as well as installing
16 either a Capital Bikeshare station or a new
17 traffic signal at 8th Street and Florida
18 Avenue, as well as asking for design
19 flexibility after they appear before the HPRB.

20 With that, the Board is to act on
21 the merits of the relief that I just cited and
22 that completes the staff's briefing, Mr.

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1 Chairman.

2

3 BZA CHAIR JORDAN: Thank you, Mr.
4 Moy.

5 Is the Board ready to deliberate?
6 Okay. Good. So we will deliberate on 18375.
7 Does anyone want to begin?

8 Yes, Vice Chair.

9 VICE CHAIRMAN SORG: Thank you,
10 Mr. Chairman. If you will excuse my voice.
11 I have a little bit of a cold. Weird for
12 July.

13 So I'm happy to start us off in
14 deliberations in this case. I will address
15 first the areas of relief that I think were
16 well documented in the Applicant's filings as
17 well as discussed in the hearings and those
18 are really my opinion, the area variances for
19 rear yard, number of parking spaces, loading
20 berths and spaces, and the special exceptions
21 for roof structures and the street frontage.

22 I think that the Applicant based

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1 on demonstrations of the interplay between the
2 constraints of the site, which are noted in
3 their application, as well as in the OP report
4 and elsewhere with the presence and
5 encouragement of WMATA infrastructure and
6 other site constraints, topographical, and so
7 forth, really demonstrated to my satisfaction
8 the practical difficulty associated with
9 holding down the FAR and the need for the rear
10 yard and those areas of relief related to some
11 of that density.

12 I think similarly demonstrated
13 that the difficulty of the parking spaces, as
14 well as the loading, through a similar set of
15 complements of practical difficulties. I
16 think we discussed the rear structures.

17 Regarding 1903.3, I think I
18 mentioned this during the hearing, I'm pretty
19 familiar with this block of Florida Avenue and
20 it will be a pretty big benefit to have a
21 wider sidewalk there for pedestrian uses.
22 It's pretty difficult at the moment.

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1 I think moving on to the lot
2 occupancy which OP had initially taken some
3 issue with, I think with the supplemental
4 submission of a document that I don't have a
5 case file for but which discussed the
6 practical difficulties meeting the lot
7 occupancy requirements and really goes through
8 in detail the design and cost implications of
9 the presence of the WMATA to me was fairly
10 compelling as well as, of course, the
11 discussion in the hearings in making me see
12 personally the wisdom and need for the lot
13 occupancy relief.

14 That being said, those are the
15 areas of relief. One of the questions, of
16 course, that we asked at the end of the
17 hearing was regarding the interplay between
18 the Zoning Regulations, the overlay, and the
19 Duke plan.

20 We asked for briefings from the
21 Applicant and parties as well as from our
22 legal counsel and OPM and were really pleased,

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1 actually, to have received those things from
2 everybody which was very helpful in analyzing
3 this case.

4 Some of us on the BZA would often
5 like to have a little bit more to say about
6 design than we get to, but it seems as though
7 based on the legislative history of the Duke
8 plan and the fact that it has not through the
9 Zoning Commission been adopted into the
10 Comprehensive Plan, it's not something that we
11 are able to directly allow to influence and
12 guide our judgment on particular areas of
13 zoning relief under variance or special
14 exception.

15 That is the charge of the BZA.
16 While we sometimes have some leeway, we are in
17 this case, in my opinion from what I have
18 read, the Applicant is not under an obligation
19 in these proceedings, unlike some others, to
20 demonstrate that its project is consistent
21 with the Duke plan to us.

22 It would actually be outside of

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1 our purview to consider the particular
2 language of that policy or small area plan.
3 But I do believe that there is some interplay
4 between or area to think about, the public
5 good and benefits or detriments to the public
6 good in the third prong of the variance test.

7 I think that as related to the
8 relief that's requested, the Applicant has
9 demonstrated that the project doesn't show any
10 negative impact on -- foreseeable negative
11 impact on the public. That is most of my
12 deliberations related to the particular zoning
13 relief.

14 I will just say on a personal note
15 I am also a business owner on the 9th and U
16 Street corridor and a lot of business owners
17 have -- so I feel I understand very well what
18 the conditions are on the ground in that
19 neighborhood for daytime users.

20 Many business owners, including
21 those who have made their voices heard in this
22 case, really are in favor of positive

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1 development in the area. I'm very hopeful of
2 that.

3 The ANC and other elected
4 officials have indicated that they want
5 additional daytime uses and additional retail
6 and revitalization of some unused property.
7 In my opinion, I do think that this project
8 will go a long way to that.

9 With regard to discussions that
10 are outside of our purview regarding historic
11 preservation and design, we all may have our
12 own opinions about that. Mine are that
13 buildings built in 2012 should look like
14 buildings built in 2012 but it's not my place
15 to say that regarding the specific relief that
16 is required here.

17 I would also just note for the
18 record subsequent to their last filings prior
19 to the hearing, the Applicant received a
20 recommendation of approval from the Office of
21 Planning, from DDOT, from the U Street
22 Neighborhood Association, from the local ANC

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1 to which we give great weight, as well as from
2 the ward council member Jim Graham to which we
3 also give great weight. That being said, I
4 could be in support of the areas of relief
5 that are requested.

6 BZA CHAIR JORDAN: Thank you, Ms.
7 Sorg.

8 Anyone else?
9 Mr. Hinkle.

10 MEMBER HINKLE: Yeah. Thank you,
11 Mr. Chairman. I generally agree with Ms.
12 Sorg's assessment. I just wanted to make a
13 couple statements on a couple of issues.

14 In terms of the lot occupancy
15 relief, again, I think the Applicant has shown
16 some cause to receive this relief. I just
17 wanted to note that really this is an area of
18 the city that can really use some additional
19 density as well as can handle some additional
20 density. While that is something we don't
21 necessarily judge when we look at the relief
22 request, I just wanted to make that statement.

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1 In terms of the loading facilities
2 and the relief of the loading facilities, I
3 just wanted to touch base on the relief from
4 the 50-foot loading berth requirement. We
5 haven't seen a lot of this request lately. It
6 seems like almost every apartment building
7 that has come to the Board has been requesting
8 it lately.

9 We all come to the Board with
10 different experiences. I happened to have the
11 experience of moving into the District from
12 out of state three times; once from Arizona,
13 once from Illinois, and once from Virginia.
14 I can tell you those three times once was into
15 a studio, once was a one bedroom, and once was
16 a two bedroom and each time we had a 50-foot
17 truck.

18 Thank goodness we had 50-foot
19 loading berths at those buildings I moved
20 into. I think we just need to be conscious
21 that if the District is striving to entice
22 people to move in, we don't want to put the

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1 extra burden of having them, you know, often
2 have their furniture off a 50-foot truck,
3 stored, put into a smaller truck, brought to
4 the building.

5 I think we need to really consider
6 how we look at these relief requests for this
7 type of loading berth in the future. That's
8 all I had to state in terms of that.
9 Otherwise, at least in this submission, I do
10 understand the limitations of the site. There
11 is an odd shape and no adjacent alley and so
12 forth.

13 I think justifiably you could
14 grant the relief from the 55-foot berth in
15 this case. But I want you to know that I
16 think we should continue to take a closer look
17 when we get these requests in the future.
18 Thank you.

19 BZA CHAIR JORDAN: In addition to
20 continuing deliveries that people may have
21 becomes an issue.

22 Ms. MacMurray.

1 MEMBER MacMURRAY: Thank you, Mr.
2 Chairman. I definitely would echo Vice Chair
3 Sorg's summary of all the issues that are
4 pending before us. Also Mr. Hinkle's comment
5 about the 50-foot relief. I, too, have had
6 the experience of moving in from out of town
7 and I understand that but, again, understand
8 the limitations of this particular site. We
9 will note in the record that this will always
10 be more of a case-by-case basis and it won't
11 be a matter of right.

12 BZA CHAIR JORDAN: Mr. Hood.

13 ZC CHAIR HOOD: Yes. I would
14 agree with all the assessments I've heard
15 about the irregular corner lot. I'm going to
16 get into the parking and the loading. I want
17 to touch base on what Board Member Hinkle
18 mentioned about the loading berth. This is
19 something actually I grappled with on with the
20 Commission.

21 While I was not fortunate enough
22 to have enough stuff to fit in a 55-foot, a

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1 lot of people are and I can tell you I just
2 wonder what are we creating? Not just here on
3 the BZA but on the Zoning Commission we are
4 seeing more and more requests for relief on
5 the loading. Sometimes you don't see the end
6 result until years later. I appreciate Board
7 Member Hinkle's flag on that. At least from
8 the Zoning Commission perspective, I will be
9 pushing that same issue from this point
10 forward. Even though it's been mentioned
11 previously, I think it brings up a great
12 concern.

13 The only other thing I wanted to
14 comment was on the Duke Plan. While I know
15 what's in the purview of the -- it's not in
16 the purview of the BZA, as well as the Small
17 Area Plan, I think there's this perception in
18 the city, and in the community, that Small
19 Area Plans, and these other plans that come
20 after the Comp Plan, which is what needs to be
21 enforced.

22 I know the BZA has to stick to

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1 that to make sure they are not inconsistent
2 with the Comp Plan. There's this misnomer out
3 there that these other plans take precedence
4 or they have some influence.

5 While basically we have tried to
6 go in that direction, it really has no bearing
7 in the decision, especially in this particular
8 case. It's unfortunate because I think the
9 perception is that these plans rule. Actually
10 they don't.

11 I have seen that a lot, especially
12 with the Small Area Plans. It's like a
13 guiding tool but at the end of the day, you
14 cannot be inconsistent with the Comp Plan.
15 It's just unfortunate. I don't know how we
16 correct that.

17 I think as far as earlier in the
18 process when we go out and we meet with
19 community folks and we say, "Okay, this is the
20 plan," people think that's the plan but
21 actually it's not. It's very unfortunate in
22 this case. I know we have specific guidelines

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1 in which we have to deal with the variance and
2 special exception on the BZA. That's just my
3 comment.

4 BZA CHAIR JORDAN: And I think, to
5 add to that, I would agree with you,
6 particularly to the depth and the requirements
7 that we needed to find out its impact. We on
8 the Board of Zoning Adjustment and others,
9 even some attorneys who normally practice in
10 this area, that there is an assumption that
11 the Small Area Plan is to be considered by
12 this Board or how they are applicable in
13 regards to the overall plan, the Comprehensive
14 Plan. I think maybe it's better communication
15 or when the plan is drafted to those people
16 who are adding input, maybe that's the
17 process. I don't know.

18 Ms. Sorg.

19 VICE CHAIR SORG: Yes. Thank you,
20 Mr. Chairman. I appreciate your and Mr.
21 Hood's comments but I just want to make sure,
22 at least for me personally, that we are not

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1 going in a direction to say that even if this
2 plan was applicable that this project would be
3 outside of its bounds because I don't believe
4 that we want to imply that this project is not
5 in keeping with the applicable plan, the Duke
6 Plan here. I don't think that is some place
7 that we want to go.

8 BZA CHAIR JORDAN: No.

9 VICE CHAIRMAN SORG: I think
10 personally that is not the case.

11 BZA CHAIR JORDAN: I don't think
12 that is in either one of our conversations.
13 We're talking about the perception and the
14 process.

15 ZC CHAIR HOOD: I would agree.
16 It's just funny. I guess that's why we've got
17 four members because I didn't hear that
18 either. That was not the context in which --

19 BZA CHAIR JORDAN: I appreciate
20 you bringing it up because somebody else might
21 have had the same thought and we're just real
22 clear now.

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1 In my view in regards to this
2 particular application, I think that there has
3 been shown a specific uniqueness and
4 exceptional circumstances based upon a
5 confluence of issues and pretty much being
6 bound by and restricted by the Metro issue
7 here pulls in some different issues for this
8 particular development. The irregular shape
9 of the lot give us some issues. Then there's
10 this easement that runs so there are some
11 restrictions. There are some things that are
12 special to this project and to this particular
13 property in and of itself.

14 If there is nothing else, then I
15 would move that the Board based upon the
16 record approve the variance under 774, 2101
17 variance, 2201 variance, special exception
18 under 770.6, special exception under section
19 1903 and 1906, and 772 variance of lot
20 occupancy. The record shows that there was an
21 exceptional extraordinary situation which we
22 believe should be granted that caused

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1 practical difficulties which should be
2 granted, but there is no undue hardship or
3 substantial detriment to the public good and
4 there is no impact upon the Zoning Regulation.
5 Also, in light that we have given great weight
6 to OP and the ANC's weigh-in of these matters.

7 ZC CHAIR HOOD: Second.

8 BZA CHAIR JORDAN: Motion made and
9 seconded including the conditions that are
10 provided of record.

11 Motion made and seconded. Any
12 further discussions that we have not had
13 already? Seeing none, all those in favor
14 signify by saying aye.

15 BOARD MEMBERS: Aye.

16 BZA CHAIR JORDAN: Those opposed
17 nay. The motion carries.

18 Mr. Secretary.

19 MR. MOY: Yes, sir. Staff would
20 record the vote as five to zero to zero, this
21 on the motion of Chairman Jordan to approve
22 the application to the relief that was

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1 requested.

2 Seconding the motion, Mr. Hood,
3 the Chairman from the Zoning Commission. In
4 support of the motion Vice Chairperson Sorg,
5 Ms. MacMurray, and Mr. Hinkle. Again, the
6 final vote is five to zero to zero. The
7 motion carries, Mr. Chairman.

8 BZA CHAIR JORDAN: Thank you.

9 We will stand adjourned from out
10 public meeting unless there is any other
11 business that needs to come before us in our
12 public meeting. Anyone?

13 MS. GLAZER: Mr. Chair, I didn't
14 hear whether or not this is a summary order.

15 BZA CHAIR JORDAN: I didn't
16 request one. I thought that we need to have
17 a full order.

18 MS. GLAZER: Thank you.

19 BZA CHAIR JORDAN: Unless the
20 Board feels differently.

21 Seeing no other business coming
22 before us in our public meeting, the public

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1 meeting will stand adjourned and we will now
2 run out and come back in -- no, move into our
3 public hearing.

4 (Whereupon, at 10:11 a.m. the
5 public meeting was adjourned.)
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