

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



October 11, 2011

By US Mail and Email PDF

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.- Suite 100
Washington, DC 20006

Re: Maximum Density Permitted under ARTS/C-2-B and Inclusionary Zoning Requirements

Dear Mr. Sher:

This is to follow-up on our discussion on Tuesday, August 9, 2011, concerning property located on Florida Avenue at 8th Street and at 9th Street (Square 393, lots 41, 44, 45, 46 and 826 and Square 416, lot 31). The property is zoned C-2-B in the ARTS Overlay.

You have previously consulted with me about properties in this zone category and I have determined that, under the ARTS/C-2-B District, an FAR of 4.7 would be permitted. The C-2-B District permits a maximum of 3.5 FAR, pursuant to §771.2. The inclusionary zoning regulations (§2604.1), which would be applicable to any new development of ten units or more, authorize an increase in density of twenty percent, which would make the allowable FAR 4.2, subject to compliance with the IZ requirements. The IZ regulations for the ARTS Overlay (§1904.1(c)) further provide that "No property subject to Chapter 26, Inclusionary Zoning, shall be eligible for bonus gross floor area unless it has met the set-aside requirements of § 2603 and used all the bonus density of available through § 2604." The ARTS Overlay District (Chapter 19 of the Zoning Regulations) also authorizes extra density for providing certain preferred uses. A project that includes at least 3.0 FAR devoted to residential use is entitled to a bonus FAR of 0.5 (§1904.3).

Reading all those provisions together, I concluded that the permitted density for a site which provides at least 3.0 FAR of residential use and meets the IZ requirements is 4.7 FAR (3.5 base FAR + 20% IZ bonus FAR + 0.5 ARTS residential bonus FAR). It is further my view that §1904.1(b) does not limit the overall density in this situation to 4.5 FAR, since §1904.1, which is qualified and limited by §1904.1(b), refers to a limit on FAR for bonus density under §1904.2 and the bonus density which we discussed is specified in §1904.3.

You have now asked whether a building in this zone classification could also include bonus density earned under §1904.2. That section awards extra density for including certain specified preferred uses, under ¶1904.2(b) at the rate of 2:1 for a department store, drug store,

dry cleaner, laundry, grocery store, hardware store, variety store or uses listed in §1908 or under ¶1904.2(c) at the rate of 1.5:1 for retail and service uses listed in §1907 or for a drinking place, both in excess of the required 0.5 FAR of commercial space at the ground level.

That bonus density can be earned by including those uses on-site or by uses which are on other sites but are linked with the subject site through the combined lot development provisions of §1905. In either case, the maximum permitted density for bonuses earned under §1904.2 is limited by §1904.1 to 4.5 FAR.

Again, reading all of these various provisions together, I conclude that a property in an ARTS/C-2-B District is eligible for density as follows:

- 3.5 FAR under the base C-2-B zoning;
- 0.7 FAR additional, as the 20% increase under IZ, which must be accounted for before you can use any bonus density per §1904.1(c);
- 0.3 FAR additional through the use of bonus density for the uses specified in §§1907 and 1908 referred to in §1904.2, to bring the FAR up to the maximum 4.5 allowed under §1904.1(b); and
- 0.5 FAR additional, under §1904.3, a separate bonus for providing at least 3.0 FAR of residential use; so,

thereby allowing a total FAR of 5.0.

Any construction must be preceded by an application for and issuance of building permits. My ruling in this matter is only with respect to compliance with the Zoning Regulations as discussed above. You will also have to comply with all other applicable District codes and ordinances.

Please let me know if I may be of further assistance.

Sincerely, 
Matthew Le Grant
Zoning Administrator