



**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR**

May 7, 2018

Samantha Mazo  
Cozen O'Connor  
1200 19<sup>th</sup> Street NW  
Washington, DC 20036

**Re: 7700-7706 Georgia Avenue NW - Square 2957, Lots 0021 & 0810 (the "Property")**

Dear Ms. Mazo,

This letter is an update to the letter from my office dated January 3, 2018, a copy of which is attached here at Tab "A".<sup>1</sup> This letter is in reference to the meeting you and your client had with my office on April 10, 2018 regarding your client's finalization of the plans for a 32-unit residential development at the Property (the "Project").

The Property is known as Lots 0021 and 810 in Square 2957 and has a total land area of 7,511 s.f.<sup>2</sup> It is located mid-block of the 7700 block of Georgia Avenue between Shepherd Road to the south and Alaska Avenue to the north. The Property fronts on Georgia Avenue, and is bounded by a public alley to the rear.

The Property is located in the MU-4 Zone District, and all land abutting the Property is similarly zoned MU-4. A copy of the Zoning Map is attached here at Tab "B". The purpose of the MU-4 zone is to permit moderate-density, mixed-use development and to "[p]rovide facilities for shopping and business needs, *housing*, and mixed uses for large segments of the District of Columbia outside of the central core." See 11 DCMR § 400.3(b), emphasis added.

The Property is an irregularly-shaped lot that has street frontage on Georgia Avenue and access from the rear alley. The Property includes one vacant lot and one lot that is improved with a two-story retail structure. The Property is bounded to the north and south by commercial uses.

The Project proposes the construction of a four-story multiple dwelling apartment house with cellar level and a habitable penthouse containing up to 32 dwelling units. The Project would be built up to the adjacent north and south lot lines and would provide sufficient on-site vehicle and bicycle parking spaces.

In summary, at our meeting, my office found the following:

---

<sup>1</sup> The January 3, 2018 Letter regarding this property addressed two development options one with 33 units, and the other with 35 units. Since that time, the plans have been finalized. The purpose of this letter is to memorialize our April 10, 2018 discussion of the final "Project" design.

<sup>2</sup> Creating the Property will require a subdivision into one new record lot, which I understand is in process.

## **The Project on the Property complies with the Zoning Regulations**

As represented in the conceptual plans attached as Tab "C", the Project is a four-story with cellar level and habitable penthouse, multiple-dwelling apartment house development containing up to 32 residential units, and the necessary bike and vehicular spaces. Resident amenity space may be included in the Project. Please refer to Vehicle Parking and Bicycle Parking in the sections below for a more detailed explanation regarding parking requirements. Multiple dwelling uses are permitted as a matter-of-right in the MU-4 zone. *See*, Subtitle U § 512.1(a).

### *Height*

Pursuant to Subtitle G § 403.1, the maximum permitted building height in the MU-4 zone is 50'. In accordance with Subtitle B § 307.1, the height for the Project will be measured from the top of the curb projected from the center of the front property line along Georgia Avenue to the top of the main parapet.

As shown on Sheet 10 of Tab "C", the Project height is 50'. Therefore, the proposed Project complies with the height requirement.

### *Penthouse Height*

Under Subtitle G § 403.2, the maximum permitted penthouse height in the MU-4 Zone District is 12', except 15' for penthouse mechanical space. This zone permits habitable penthouse uses in one story plus a mezzanine and a second story for mechanical space.

As shown on Sheet 10 of Tab "C", the Project proposes an approximately 12'-tall habitable penthouse that includes an additional 3' for penthouse mechanical space for a total height of 15'. Accordingly, the maximum height of the penthouse is permitted in the MU-4 zone.

### *Penthouse Setback*

Subtitle C § 1502.1 (a) and (b) require a setback at 1:1 ratio from the front and rear building wall of the roof upon which it is located. As shown on Sheets 10 and 14 of Tab "C", the proposed habitable penthouse will be set back at least 1:1 from the front and rear roof walls (at least 12'-setback from the front and rear). Further, a compliant side penthouse setback is provided from the adjacent property at Lot 24. No side penthouse setback is required from the adjacent property at Lot 811 because that lot is also zoned MU-4 and is a face on lot-line wall. Accordingly, the proposed penthouse setbacks satisfy the penthouse setback requirements of Subtitle C § 1502.1 (a), (b) and (c).

Further, as shown on Sheet 15 of Tab "C", the screening around the mechanical penthouse equipment will be set back between 8' and 11'- 3" from the habitable penthouse roof walls. The screening setback is in satisfaction of Subtitle C § 1502.1 (a), (b) and (c), and the difference in height of the mechanical penthouse walls is permitted in Subtitle C § 1500.9(a). As discussed above, the proposed penthouse height is in satisfaction of Subtitle G § 403.2.

### *Floor Area Ratio (FAR)*

Under Subtitle G § 402.1, the maximum permitted FAR for a building located in the MU-4 zone is 2.5 FAR, which can be increased to 3.0 FAR with Inclusionary Zoning (“IZ”). As will be discussed below, this Project is subject to the IZ requirements, and will provide the requisite IZ set aside; thus, this Project will obtain IZ bonus density. The Property has a total land area of 7,511 s.f. The Project proposes an approximate maximum of 22,446 s.f. of gross floor area (“GFA”), which constitutes an FAR of 2.99. The FAR provided complies with the requirement for the MU-4 zone.

Pursuant to Subtitle C § 1503.1(c), penthouse habitable space with an FAR up to 0.4 does not contribute to the FAR permitted for the building. The proposed penthouse square footage is 3,002, which corresponds to an FAR of 0.4. Therefore, the proposed penthouse does not contribute to the total FAR for the Project.

Notably, pursuant to the pending Zoning Text Amendment 17-18 (“ZTA 17-18”),<sup>3</sup> the definition of Gross Floor Area in Subtitle B § 100.2, would be amended to reference the “Chapter 3, Rules of Measurement”, and a new Subtitle B § 304.7 is proposed to read:

GFA shall not include *cellars*, exterior balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building, ***all projections beyond the lot line that may be allowed by other Municipal codes***, vent shafts, and pipe chase shafts above the ground floor, atriums above the ground floor, ramps on the ground floor leading down to areas of parking on a lower level; and in residential zones, the first floor or basement area designed and used for parking or recreation spaces provided that not more than fifty percent (50%) of the perimeter of that space may be comprised of columns, piers, walls, or windows, or similarly enclosed.

Thus, square footage in the cellar and any bay window projections shall not be counted toward the Project’s FAR.

### *Cellar*

---

<sup>3</sup> The Office of Planning (“OP”) introduced ZTA 17-18 on October 6, 2017, and the application was set down shortly thereafter. OP’s staff report was published on January 8, 2016 (the “January 8 Staff Report”), and a copy of the January 8 Staff Report is attached here at Tab “D”. The public hearing was held on February 22, 2018, and the Zoning Commission continued further deliberations to May 24, 2018. The above analysis of ZTA 17-18 anticipates the Zoning Commission’s adoption of the language proposed in the January 8 Staff Report. If that language is not adopted or is altered prior to adoption, the analysis of the cellar and gross floor area would be based on the language effective at the time of building permit. To be clear, as of the date of this letter, ZTA 17-18 had not become effective, and accordingly, the relevant language in effect was:

- Definition of “Gross Floor Area”: Subtitle B § 100.2, GFA “shall not include cellars, exterior balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building, all projections beyond the lot line that may be allowed by other Municipal codes, vent shafts, and pipe chase shafts above the ground floor, atriums above the ground floor, ramps on the ground floor leading down to areas of parking on a lower level;” (emphasis added).
- Definition of “Cellar”: Subtitle B § 100.2. a cellar as the “portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.”



ZTA 17-18 also proposes to amend the definition of “cellar” in Subtitle B §100.2 to read “That portion of a story partly below grade where the finished floor of the ground floor is less than five feet (5 ft.) above the adjacent natural or finished grade, whichever is lower in elevation.” Moreover, as stated above ZTA 17-18 establishes that that Gross Floor Area “shall not include cellars...” Subtitle B §100.2.

As shown on the Sheet 9, the below-grade level satisfies the definition of a cellar because the finished floor of the ground floor is proposed to be 4’-9” above the Building Height Measuring Point identified on the site plan. Habitable units are permitted in a cellar, and this office has approved window wells to allow light into those units on many developments and does so again here. Proposed changes to Subtitle B §100.2 in ZTA 17-18 explain that a “window well that projects no more than four feet (4 ft.) from the building face” is permissible and does not create a “finished grade”. That standard is satisfied here, as shown on Sheet 9.

### *Lot Occupancy*

Under Subtitle G § 404.1, the maximum lot occupancy for a building located in the MU-4 zone is 60%, which can be increased to 75% with IZ. As discussed, the Project is eligible for the IZ bonus density. Lot occupancy is the “percentage of the total area of a lot that is occupied by the total building area of all buildings and structures on the lot.” The attached proposed plans show a maximum Project size of approximately 5,633 s.f., which is a maximum lot occupancy of approximately 75%. This lot occupancy complies with the requirement for the MU-4 zone.

### *Rear Yard*

The property line between the Project and the alley is the rear lot line. Pursuant to Subtitle G § 405.2 a property in the MU-4 zone must provide a rear yard of 15’. As to where a lot abuts an alley, then the requirements of Subtitle G § 405.5(a)(1-2) apply, which read:

- (1) For that portion of the structure below a horizontal plane described in Subtitle G § 405.4 from the center line of the alley to the rear wall of the portion; and
- (2) For that portion of the structure above the horizontal plane described in Subtitle G § 405.4, from the rear lot line to the rear wall of that portion immediately above the plane.

In this case, the Project is providing a full 15’ setback from the alley on floors 1 - 3 as shown on Sheet 9 and 13, and a rear yard 21’-4” in depth on the ground floor, as shown on Sheet 12. Further, the “open triangle” at the Property’s southwest corner is included in the Property’s rear yard. That area includes a stairway down to the cellar that does not constitute a projection into the rear yard. As provided, the rear yard complies with the requirement for the MU-4 zone.

### *Side Yard*

Pursuant to Subtitle G § 406.1 “No side yard is required for a building or structure other than a detached single dwelling unit or semi-detached single dwelling unit; however, if a side yard is provided it shall be at least two inches (2 in.) wide for each one foot (1 ft.) of height of building

but no less than five feet (5 ft.).” The Project provides no side yards, in compliance with the MU-4 zone requirements.

#### *Courts*

No courts are required in the MU-4 zone district, and none are provided.

#### *Light Well*

The Project proposes a light well starting in the cellar and running to the top of the building along the party wall to the south. The light well will have a trellis at the top as shown on Sheet 15 and, accordingly, shall not be considered a closed court. The light well shall be counted toward FAR once, only on the ground floor level and will contribute to lot occupancy.

#### *Vehicle Parking*

Under Subtitle C § 701.5, a residential, multiple dwelling requires 1 space per 3 units in excess of 4 units. The Property is located within 0.25 miles of Metrobus Route 79, which is identified as a “Priority Corridor Network” Metrobus Route under Subtitle C § 702.1(c)(1). Further, as required by Subtitle C § 702.1(c), the District’s Department of Transportation (“DDOT”) has issued written confirmation that the Property is located on a block that does not participate in the RPP program. An e-mail from DDOT is attached hereto at “Tab E”. Accordingly, the Project is entitled to the 50% transit reduction pursuant to Subtitle C § 702.1(c)(1).<sup>4</sup>

As represented in the attached plans, the Project proposes up to 32 dwelling units, which would normally require a minimum of 10 parking spaces for the residential use. As a result of the 50% reduction noted above, the Project is only required to provide 5 parking spaces. The Project meets the parking requirement because it proposes 9 parking spaces.

A minimum of 50% of a building’s parking requirement must be full-sized 9’x18’ parking spaces. The remainder may consist of compact 8’x16’ parking spaces. As shown on Sheet 9, four of the parking spaces will satisfy the 9’ x 18’ standard space dimensional requirement and four spaces will satisfy the 8’ x 16’ compact space dimensional requirement. One parking space will be 10’ x 18” and will serve as a handicapped space.

Pursuant to Subtitle C § 714.1, screening is required for any external surface parking spaces, subject to exceptions not applicable in this case. Subtitle C § 714.2 provides the methods by which the screening requirements can be met, and my office finds that these are satisfied by the provision of a roll-up door.

#### *Bicycle Parking*

Pursuant to Subtitle C § 802.1, residential apartments require one long-term bicycle parking space for every three dwelling units and one short-term bicycle parking space for every 20 dwelling units.

---

<sup>4</sup> DDOT has confirmed that while the Property could be eligible for RPP, such designation could not be applied because of the existence of metered parking in front of the building. See Exhibit “E”.

The Project proposes up to 32 units and, accordingly, is required to provide a maximum of 11 long-term bicycle parking spaces and one short-term bicycle parking space.

The Project provides the necessary long-term bicycle parking spaces in a dedicated bike room on the cellar level. The Project will also provide one short-term bicycle parking space, and my understanding is that it will be provided in a “u-ring” that may be located inside or outside of the building or in public space with DDOT approval. Therefore, the Project will provide the necessary bike spaces on site, and thus comply with the bicycle parking requirement.

### *Loading*

Pursuant to Subtitle C § 901.1, a loading berth and a service/delivery area is required for residential developments with 50 or more dwelling units. The Project proposes 32 dwelling units. Accordingly, no loading is required.

### *Green Area Ratio (GAR)*

Under Subtitle G § 707.1, the GAR requirement in the MU-4 zone is 0.3. The Project will satisfy the GAR as required.

### *Inclusionary Zoning*

Subtitle C § 1001.2(c) requires that a development would be subject to IZ requirements when the proposed project would have ten or more new dwelling units constructed concurrently or in phases, on contiguous lots or lots divided by an alley if such lots were under common ownership, control, or affiliation within one year before the application for the first building permit.

Pursuant to Subtitle C § 1003.1, a wood-framed/“stick-built” inclusionary development that does not employ Type I construction to construct a majority of dwelling units and which is located in a zone with a by-right height limit of 50’ or less the required to provide the greater of the below as IZ units:

- 10% of the gross floor area dedicated to residential use including penthouse habitable space;<sup>5</sup> or
- 75% of its achievable bonus density to inclusionary units plus an area equal to 10% of the penthouse habitable space.

Pursuant to Subtitle C § 1003.2, a steel/concrete inclusionary development that employs Type I construction to construct the majority of dwelling units is required to provide the greater of the below as IZ units:

---

<sup>5</sup> We note that pursuant to Subtitle C § 1003.9, “An inclusionary development’s entire residential floor area including dwelling units located in cellar space or enclosed building projections that extend into public space, shall be included for purposes of calculating the minimum set-aside requirements of Subtitle C §§ 1003.1 and 1003.2.”

- 8% of the gross floor area dedicated to residential use including penthouse habitable space; or
- 50% of its achievable bonus density to inclusionary units plus an area equal to 8% of the penthouse habitable space.

The Median Family Income (“MFI”) in the Washington Metropolitan Statistical Area established in July 2017 is \$110,300 for a household of four. As detailed in Subtitle C § 1003.3, for-rent inclusionary units are reserved for families earning 60% of MFI. For-sale inclusionary units are reserved for families earning 80% of the MFI. Finally, inclusionary units resulting from the penthouse habitable space would be reserved for families earning equal to or less than 50% of the MFI. Further, the penthouse inclusionary zoning requirement could be met by a contribution into the housing trust fund consistent with the formula set out in Subtitle C § 1505.13 through § 1505.16.


Here, the Project proposes a total of 32 dwelling units. Accordingly, the Project will be required to comply with IZ. The number of IZ units required for the Project will be determined when your client chooses a type of construction for the Project.

### **Conclusion**

Based on the review of the attached plans and exhibits, the Project on the Property complies with the MU-4 Zone District requirements, and the Project may be permitted as a matter-of-right.

Accordingly, when the building permit application for the Project is filed, my office will approve drawings that are consistent with the plans attached to this letter at Tab “C”. Please let me know if you have any further questions.

This determination letter constitutes the first writing reflecting the administrative decision regarding the final project discussed on April 10, 2018, identified in the plans attached to this letter at Tab “C”. Therefore, under Subtitle Y § 302.5 of the District’s Zoning Regulation, no subsequent document, including a building permit or certificate of occupancy, can be appealed unless the document modifies or reverses this letter or reflects a new decision.

Sincerely,   
 \_\_\_\_\_  
 Matthew Le Grant  
 Zoning Administrator

DISCLAIMER: This letter is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this letter are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this letter. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This letter is **NOT** a “final writing”, as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this letter based on the information submitted for the Zoning Administrator’s review. Therefore this letter does **NOT** vest an application for zoning or other DCRA approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

Attachments:

Tab "A": January 3, 2018 Zoning Determination Letter for the Property

Tab "B": Zoning Map

Tab "C": Preliminary Architectural Plans

Tab "D": January 8, 2018 OP Staff Report on ZTA 17-18

Tab "E": Email from D.C. Department of Transportation