



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

April 17, 2020

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

**Re: 1626-1644 North Capitol Street NW- Square 3101, Lots 1, 812 and 80  
(the “Property”)**

Dear Ms. Moldenhauer,

This letter is in reference to the meetings you and your client had with my office on January 17, 2020, March 6, 2020, and March 26, 2020, regarding your client’s plans for a development at the Property. Previously, we also discussed your client’s plans on December 10, 2019. Following that meeting, my office issued a written confirmation concerning the proposed penthouse use, which is attached at **Tab “A”**.

The Property is located in the MU-4 Zone District and, after subdividing the three existing lots, is approximately 11,723 sq. ft. in land area. A copy of the Zoning Map identifying the Property is attached at **Tab “B”**. The Property is within the Bloomingdale Historic District.<sup>1</sup> The Property is a corner lot that fronts on North Capitol Street NW, with Quincy Place NW to the south. To the east of the Property is an alley that is 12.17 feet in width (the “Alley”). To the north of the Property are existing rowhomes.

Lot 1 is improved with the “Olde Engine Company No. 12” fire station building (the “**Existing Structure**”) that is an historic landmark. The Existing Structure will be renovated, but the exterior envelope of the Existing Structure will not be substantially altered, with the exception of a revised rear stair. In addition to renovating the Existing Structure, your client intends to subdivide the Lots 812, 80 and 1, raze the existing structures on Lots 812 and 80, and construct a new four-story plus penthouse development (the “**New Structure**”) on Lots 812 and 80 (the “**Project**”). Concept plans for the Project were reviewed during our meetings and are attached here at **Tab “C”** (the “**Plans**”).

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<sup>1</sup> This letter only concerns application of the Zoning Regulations and makes no conclusions as to preservation requirements under the Historic Preservation Act.

In summary, based on the above, my office found the following:

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

#### **Height**

In the MU-4 zone, a building may have a maximum permitted height of 50 feet and does not impose a maximum number of stories. *See* Subtitle G § 403.1. The Existing Structure is approximately 43 feet in height, which will not be altered. The New Structure will have a maximum height of 49 feet. *See* **Tab C**, pg. 4, 12. Accordingly, the Project complies with the building height requirement under Subtitle G § 403.1.

#### **Floor-Area-Ratio (“FAR”)**

In the MU-4 zone the total maximum FAR is 2.5, with no more than 1.5 FAR dedicated to non-residential uses. *See* Subtitle G § 402.1. The Project will have a total gross floor area of 28,488 sq. ft., which is an FAR of 2.43. *See* **Tab C**, pg. 4. As outlined below, the gross floor area is dedicated to a hotel use, a restaurant use and shared space between the two uses. The floor space in the cellar level is excluded from this calculation, as provided under Subtitle B § 304.8.<sup>2</sup> Additionally, the Project proposes a penthouse with 2,507 sq. ft., which is less than 0.4 FAR. As such, that penthouse gross floor area is excluded from the total FAR calculation. *See* Subtitle C § 1503.1(c).

As noted, the MU-4 zone allows a maximum of 1.5 FAR dedicated to non-residential uses. The proposed restaurant use is a non-residential use with 2,858 sq. ft. of gross floor area. *See* **Tab C**, pg. 4. The hotel use will be entirely comprised of guest rooms and service areas; therefore, the hotel’s gross floor area of 23,124 sq. ft. is a residential use for the purposes of calculating FAR. Under Subtitle B § 304.2(e), guest rooms and service areas of a hotel with more than 30 rooms are considered to be residential floor area for purposes of determining FAR. Whereas, gross floor area dedicated to function rooms, exhibit space and commercial adjuncts is deemed to be non-residential FAR. *See* Subtitle B § 304.3. On floors one through four, the Project does not propose any function rooms, exhibit space or commercial adjuncts. *See* **Tab C**, pgs. 6-9. While there is a commercial adjunct – a restaurant – on the penthouse level, that penthouse habitable space is excluded from FAR calculations because it is less than 0.4 FAR.

Further, it is my office’s practice to attribute the “dual purpose” floor area *pro rata* based on the percentage of total building FAR dedicated to each use. The Project’s first level has 2,506 sq. ft. of gross floor area that is shared between the restaurant and hotel use. *See* **Tab C**, pg. 4, 6. Of the non-shared gross floor area, 11% is dedicated to the restaurant use (2,858 out of 25,982) and 89% is dedicated to the hotel use (23,124 out of 25,982). Accordingly, 276 sq. ft. of shared space is distributed to the restaurant use and 2,230 sq. ft. is distributed to the lodging use. Therefore, in total, 3,134 sq. ft. of gross floor area, or .27 FAR, is attributed to the restaurant use, which is non-residential FAR.

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<sup>2</sup> The below-grade level qualifies as a cellar because the ceiling of the first level is less than five feet above the adjacent finished grade.

Accordingly, the Project has a total FAR of 2.43, with 0.27 FAR dedicated to non-residential uses, which complies with the overall FAR requirements in the MU-4 zone.

### **Lot Occupancy**

In the MU-4 zone, there is no maximum lot occupancy for a non-residential use. *See* Subtitle G § 404.1. The proposed hotel and restaurant are non-residential uses for the purposes of calculating lot occupancy. The Project proposes a maximum lot occupancy of 65.4%. *See* **Tab C**, pg. 4. Accordingly, the Project complies with the maximum lot occupancy requirement.

### **Rear Yard**

Pursuant to Subtitle G § 405.2, a rear yard of at least 15 feet is required. In the MU-4 zone, the rear yard can be measured from the centerline of the Alley for the portion of the Project that is below a horizontal plane measured 20 feet from mean finished grade at the middle rear of the building. *See* Subtitle G §§ 405.4, 405.5. Above the 20-foot horizontal plane, the rear yard is measured from the rear lot line.

The Existing Structure has a non-compliant rear yard due to the rear egress stair that extends beyond the rear lot line into the Alley. Therefore, as to rear yard, the Existing Structure is a non-conforming structure. Pursuant to Subtitle C § 201.2, additions or enlargements may be made to a non-conforming structure provided the addition/enlargement conforms to development standards *and* “neither increase or extend any existing non-conforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

For the Existing Structure, the Project proposes to reconfigure a rear egress stair to *increase* the rear yard to 14’9” as measured from the centerline of the Alley. *See* **Tab C**, pg. 6. As part of this reconfiguration, the new stair will cover a smaller area of the rear yard than the existing stair. Specifically, the existing stair is 3’6” in width and projects 11’7” into the required rear yard for a lot coverage of 40.54 sq. ft. *See* **Tab C**, pg. 6. The Project’s new proposed stair is 10’3” in width, but projects only 3” into the required rear yard for a lot coverage of 2.56 sq. ft. The Project will not otherwise alter the building envelope of the Existing Structure. *See* **Tab C**, pg. 6. Therefore, although the rear yard of the Existing Structure remains non-conforming, the Project does not increase or extend the non-conformity and is compliant with the rear yard requirement.

Further, the New Structure will comply with the 15-foot rear yard requirement. *See* **Tab C**, pg. 6. Below the 20-foot horizontal line, the New Structure will have a rear yard of 28’7”, as measured to the centerline of the Alley. *See* **Tab C**, pg. 6-7. Above the 20-foot horizontal line, the New Structure will have a rear of 15 feet, as measured to the rear lot line. *See* **Tab C**, pg. 8-9. Accordingly, the Project complies with the rear yard requirement.

## **Side Yards**

No side yard is required for an attached building in the MU-4 zone; however, if a side yard is provided, it must be at least two inches (2 in.) wide for each one foot (1 ft.) of building height, but no less than five (5) feet. *See* Subtitle G § 406.1. The Existing Structure has an existing side yard on the southern property line of approximately 11'1". With a height of 49 feet, the Project requires a side yard of 8'2". Accordingly, the Project complies with Subtitle G § 406.1.

Further, in the MU-4 zone, "any portion of a building setback from the side lot line shall be considered a side yard and not a court." *See* Subtitle G § 406.3. The Project proposes a court on its northern side, which abuts the northern side lot line and will be treated as a side yard. *See* **Tab C**, pg. 6. The court is 10'8" in width, which exceeds the minimum requirement of 8'2" for a side yard.

## **Courts**

The Project proposes an internal closed court. *See* **Tab C**, pg. 6. Under Subtitle G § 202.1, a closed court for a lodging use must have a width equal to 2.5 inches per foot of court height, with a minimum of 12 feet, and a court area equal to twice the square of the required court width, with a minimum of 250 sq. ft. The height of the court is 49 feet, which requires a width of 10.2 feet and the minimum area of 250 sq. ft. The internal closed court is 18 feet in width and has an area of 540 sq. ft. *See* **Tab C**, pg. 4, 6. Accordingly, the court is compliant with Subtitle G § 202.1.

## **Vehicle Parking**

Lodging uses are required to provide 0.5 vehicle parking spaces for every 1,000 sq. ft. over 3,000 sq. ft. and eating and drinking establishment uses are required to provide 1.33 vehicle parking spaces per every 1,000 sq. ft. in excess of 3,000 sq. ft. *See* Subtitle C § 701.5. For the purposes of calculating parking requirements, the Project's hotel use will consist of 27,861 sq. ft., which includes its *pro rata* share of floor space on the first level and all of the Project's proposed penthouse habitable space.<sup>3</sup> As such, the lodging use will have a requirement of 12 spaces.

The restaurant use is 3,134 sq. ft., but this is a continuing use that is not being changed or expanded within the Existing Structure, which is a historic resource. Under Subtitle C § 705.3, "a historic resource shall not be required to provide additional parking spaces for a change in use without expansion." Pursuant to Certificate of Occupancy #1800911, the current restaurant use in the Existing Structure is in the basement and first through third floors. A copy of CO#1800911 is attached at **Tab "E"**. The Project's restaurant use will only be in the cellar and first levels. Accordingly, the Project does not need to provide any parking for the restaurant use.

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<sup>3</sup> The proposed restaurant space on the Project's penthouse is considered a commercial adjunct to the hotel use and, therefore, contributes to the total gross floor area for the hotel use, but not the separate restaurant use.

Additionally, due to the Project's proximity to the NOMA Metrorail Station, the total number of vehicle parking spaces required would be reduced by 50%. See Subtitle C § 702.1; a copy of a zoning map with distance to NOMA Metro is attached at **Tab "D"**. Therefore, the Project's 12 space requirement can be reduced to 6 parking spaces.

As shown on the Plans, the Project will provide 2 vehicle parking spaces, both of which are dedicated to car share. See **Tab C**, pg. 6. Each car share space counts as 3 parking spaces for a total of 6 parking spaces in the Project. See Subtitle C §§ 701.11, 708.2. Therefore, the Project meets the vehicular parking requirements.

### **Bicycle Parking**

Pursuant to Subtitle C § 802.1, lodging uses and require one long-term bicycle space per 10,000 square feet and one short-term space per 40,000 square feet. Eating and drinking uses require one long-term space per 10,000 sq. ft. and one short-term space per 3,500 sq. ft. With a total gross floor area of 30,995 sq. ft., which includes habitable penthouse space, the Project would require three long-term bike spaces. Further, the gross floor area dedicated to each use – 27,861 sq. ft. to lodging and 3,134 sq. ft. to restaurant - is under the minimum threshold for a required short-term bicycle space.<sup>4</sup> Therefore, no short-term bicycle spaces are required.

As shown on the Plans, the Project will have a bicycle storage room on the cellar level, which will have at least three long-term bicycle spaces. See **Tab C**, pg. 5. Accordingly, the Project will satisfy the bicycle parking requirements under Subtitle C § 802.1.

### **Loading**

Pursuant to Subtitle C § 901.1, for lodging uses between 10,000 sq. ft. and 50,000 sq. ft., one loading berth is required and no service and delivery spaces. The Project will have 27,861 sq. ft. dedicated to a lodging use, which would require one (1) loading berth. As depicted in the Plans, the Project will have a 30' x 12' loading space, with an adjacent platform. See **Tab C**, pg. 6. As such, the Project complies with its loading requirement.<sup>5</sup>

With regard to the restaurant use, the 3,134 sq. ft. is below the threshold for a loading requirement as to either a "food and alcohol services" use. Therefore, there is no loading requirement for the Project's restaurant use.

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<sup>4</sup> As with vehicular parking, under Subtitle C § 802.4, the restaurant use in the Existing Structure is not increasing and, accordingly, there is no bicycle requirement for the restaurant use. Since the restaurant floor area does not meet the minimum threshold for a short-term bicycle parking space, the matter is moot. The Project is otherwise meeting its bicycle requirement associated with the hotel use.

<sup>5</sup> Although the original lot lines are depicted in the Plans, your client has indicated it will subdivide the three existing lots as a consolidation so as to create one lot.

### **Green Area Ratio (“GAR”)**

Pursuant to Subtitle G § 407.1 and Subtitle C § 600, the required GAR for the MU-4 zone is 0.3. Your client has stated that it intends to incorporate a green roof over a substantial portion of the New Structure. Your client has represented that the green roof feature will be sufficient to meet the Project’s GAR requirement. Based on these statements, the Plans set forth the Project will meet the GAR requirement. See **Tab C**, pg. 4.

### **Penthouse**

The Project proposes a one-story habitable penthouse that will have a restaurant. See **Tab C**, pg. 10. Your client has stated that the proposed restaurant will only be accessible to hotel patrons, not the general public. As confirmed by my office via email attached at **Tab A**, and consistent with this office’s prior interpretations, a food service use, i.e. prepared food, restaurant, or bar, that is *only* accessible by hotel patrons would be permitted as a matter-of-right in the penthouse. See Subtitle C § 1500.3; Subtitle U § 512.1(d).

Pursuant to Subtitle G § 403.3, the maximum permitted height of a penthouse shall be 12 feet above the roof, except that 15 feet shall be permitted for mechanical space. The maximum permitted number of stories for penthouse habitable space is one, but a second story is permitted for penthouse mechanical space. The Project proposes a one-story penthouse that is 12 feet in height and, therefore complies with these requirements.

Further, the penthouse must be setback at a ratio of 1:1 from both the front and rear roof walls. As depicted in the Plans, the penthouse will be setback 12 feet from the front and rear roof walls and, therefore, satisfies this requirement. See **Tab C**, pg. 4, 10. For the southern side of the roof, the penthouse must be setback at the 1:1 ratio because it is directly adjacent to the historic fire station. See Subtitle C § 1502.1(c)(4). As set forth in the Plans, the southern setback requirement will be 12’1.5”. See **Tab C**, pg. 4, 10. For the northern side, the penthouse can be setback at a ratio of 1:1/2 because it does not meet any of the criteria under Subtitle C § 1502.1(c) and it is not adjoining another building wall. As depicted in the Plans, the penthouse will be setback 6 feet from the northern roof wall, which meets this requirement. See **Tab C**, pg. 4, 10.

### **Use**

Pursuant to Subtitle U § 512.1(a), lodging use is permitted as a matter-of-right in the MU-4 zone. Additionally, an eating and drinking establishment is permitted as a matter-of-right in the MU-4 zone. See Subtitle U § 512.1(d). Accordingly, the Project’s proposed uses are compliant with the Zoning Regulations.

### **Inclusionary Zoning**

Since the Project proposes no dwelling units, there is no Inclusionary Zoning (“IZ”) requirements, with the exception of requirements related to penthouse habitable space. See Subtitle C § 1001.2(a); Subtitle G § 104.1. As a result of providing penthouse habitable

space, the Project must set aside an area equal to ten percent (10%) of the penthouse habitable space; however, this requirement can be met through a contribution to the housing production trust fund as set forth under Subtitle C § 1505. See Subtitle C §§ 1001.5, 1500.12. The owners have indicated they will contribute to the house production trust fund in lieu of any IZ set aside requirements.

### **Conclusion**

Based on this office's review of the attached Plans, my office confirms that the Project on the Property complies with the requirements of the MU-4 Zone District and may be permitted as a matter-of-right. Accordingly, when the building permit application for the Project is processed, my office will approve drawings that are consistent with the Project Plans attached to this letter at **Tab "C"**.

Please let me know if you have any further questions.

Sincerely,   
Matthew Le Grant  
Zoning Administrator

Attachments: Tab "A": Zoning Confirmation Email as to penthouse  
Tab "B": Property Zoning Map  
Tab "C": Architectural Plans  
Tab "D": Distance Measurement on Zoning Map  
Tab "E": Certificate of Occupancy #1800911

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.