

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



February 1, 2016

Christine Moseley Shiker
Holland & Knight LLP
2099 Pennsylvania Avenue, NW - Suite 100
Washington, DC 20006

Re: Transferable Development Rights -Development of 22 M Street, NE in Square 672

Dear Ms. Shiker:

This is to confirm the substance of my discussion on December 14, 2015, with Steve Sher and Chip Glasgow of Holland & Knight, regarding the transferable development rights ("TDRs") needed for development of 22 M Street, NE (Lot 858 in Square 672) (the "Site"). The Site is part of Record Lot 259 in Square 672 (the "Record Lot"). The Record Lot is zoned C-3-C and is located within the North Capitol Receiving Zone for TDRs. We have reviewed development of the Record Lot on several occasions, and I have issued letters dated March 24, 2009, March 26, 2012, October 29, 2012, and August 31, 2015.

According to the Subdivision Plat, recorded on September 28, 2012, in the records of the Office of the Surveyor at Book 206, Page 182, the Record Lot contains 132,586 square feet of land area. The Record Lot has been divided into five Assessment & Taxation ("A&T") lots as follows:

Address	A&T Lot Number within Record Lot	Lot area
1200 First Street, NE	Lot 856, Square 672	34,405 sf
88 M Street, NE	Lot 855, Square 672	36,741 sf
44 M Street, NE	Lots 854 and 857, Square 672	28,896 Sf
22 M Street, NE	Lot 858, Square 672	32,544 sf
	TOTAL	132,586 sf

You informed me that your client owns Lots 854, 855, 857 and 858 and another unrelated entity owns Lot 856. Lot 856 (known as 1200 First Street, NE) has been improved with a 12-story office building with three levels of below-grade parking, which was the first phase of a multi-phase building to be constructed on Record Lot 259. This first phase includes 302,214 square feet of gross floor area and has a height of 130 feet. Your client intends to construct three subsequent phases as an addition to the existing building.

The Record Lot can be developed as a matter of right with a maximum height of 90 feet and a maximum FAR of 6.5. With the purchase and legally sufficient transfer of TDRs, the Record Lot can be developed with a maximum height of 130 feet and a maximum FAR of 10.0. These calculations are as follows:

Lot Area:	132,586 square feet
6.5 FAR:	861,809 square feet
3.5 FAR:	<u>464,051 square feet</u>
10.0 FAR:	1,325,860 square feet

A total of 260,000 square feet of TDRs have been vested in the Record Lot by virtue of the following two TDR Certificates (“Vested TDRs”):

- Certificate of Transfer of Development Rights (Transfer No. 2) dated January 9, 2004, and recorded as Instrument Number 2004059740 transferring 100,000 square feet of TDRs; and
- Certificate of Transfer of Development Rights (Transfer No. 2) dated April 26, 2004, and recorded as Instrument Number 2004079417 transferring 160,000 square feet of TDRs.

These TDR Certificates were originally recorded against a previous record lot which did not include the Site. At the time that the TDR Certificates referenced above were recorded, this office had interpreted the provisions of Section 1709 of the Zoning Regulations to allow a building to be built to the maximum height as long as additional density was transferred to the through the TDR process. Subsequent to that date, this office took a different view of the Regulations. In a written ruling dated August 25, 2005, the Zoning Administrator determined that any future TDR Certificates of Transfer should include the following language:

The transfer of TDRs pursuant to this Certificate shall not permit an increase in the matter-of-right building height in a receiving zone lot unless the additional building height utilizes the additional floor area added to a receiving zone lot through the transfer of TDRs.

This language has been consistently included in TDR Certificates since that date.

Because the Vested TDRs were vested in the previous record lot, the TDRs required for the development of 44 and 88 M Streets (Lots 854, 855, and 857) will be based on the total amount of density above 6.5 FAR consistent with the pre-2005 interpretation. Because there are not sufficient Vested TDRs to also provide the additional required density for the Site, the total TDRs needed for the Site must be calculated to equal the density located above 90 feet above the measuring point. According to the section that you provided to me, a copy of which is attached hereto, the line that equals 90 feet above the measuring point runs directly through the 10th floor slab. Thus, TDRs will be needed for Gross Floor Area on the 10th, 11th, 12th and 13th floors of

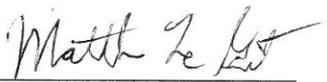
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the proposed development for the Site. Based on current plans for development at 22 M Street (and as shown on the attached), a total of 101,889 square feet of TDRs will be needed. As of the date of this letter, the owner expects to use 33,188 square feet of the remaining Vested TDRs, which will result in the owner needing to acquire 68,701 square feet of additional TDRs from other sources. These numbers may change as the design is finalized; however, the owner will use some number of Vested TDRs and will acquire the remaining needed TDRs from other sources.

I believe that I have addressed the issues which we discussed and agreed upon. Please let me know if you have any further questions.

Sincerely,



Matthew Le Grant
Zoning Administrator

Attachment: Section through proposed development at 22 M Street, NE