

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



June 5, 2017

Meridith H. Moldenhauer  
Griffin, Murphy, Moldenhauer & Wiggins, LLP  
1912 Sunderland Place, NW  
Washington DC, 20036

**Re: 3411-3413 Georgia Avenue, NW (collectively, the “Property”)  
Square 3039, Lots 822 and 823**

Dear Ms. Moldenhauer,

This letter is in reference to our meetings on February 9, 2017, March 8, 2017, and April 26, 2017 regarding your client’s intended residential development of the Property (the “Project”).

The Property is comprised of two adjacent lots – Lot 822 and Lot 823. Lot 822 has a land area of 2,387 square feet and is currently unimproved. Lot 823 has a land area of 2,336 square feet and is currently improved with a two-story restaurant. The total lot area for Lot 822 and Lot 823 is 4,723 square feet. The lots front on Georgia Avenue, NW, with an alley to the rear of each lot. The Property is in the NC-7 Zone District, which encourages “additional residential uses along the Georgia Avenue corridor.” *See* Subtitle H § 800.1(c).

In summary, at our meeting and during our subsequent dialogue, I found as follows:

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

As represented in the conceptual plans attached at Exhibit “A”, the Project is a residential development containing 16 residential units. A residential use is permitted as a matter of right in the NC-7 zone. *See*, Subtitle H § 1103.1(m).

*Height*

Pursuant to Subtitle H § 803.1, the maximum permitted building height in the NC-7 zone is fifty (50) feet. The Property is subject to the Georgia Avenue Neighborhood design requirements set forth in Subtitle H § 809. Under Subtitle H § 809.1(g), buildings subject to the requirements of Subtitle H § 809.1(f) “shall be permitted an additional five feet (5 ft.) of building height over that permitted as a matter of right in the zone.” Since the Property is subject to the requirements of Subtitle H § 809.1(f), the Project is entitled to reach a maximum height of fifty-five (55) feet.

The Project proposes a building height of 55’, which is measured to the top of the parapet in accordance with Subtitle B § 307.3. As I have previously indicated, the proposed areaway at the front of the Project does not affect the calculation of building height. Therefore, the proposed Project complies with the height requirement.

### *Penthouse Height*

Subtitle H § 803.2 states that a penthouse with habitable space may be built to a height of 12 feet and a penthouse with mechanical space can reach 15 feet in height. The penthouse may contain one story of habitable space, with a second story permitted for mechanical space. *See id.*

As shown on the plans attached at Exhibit “A”, the Project proposes habitable penthouse space that is 10 feet in height and one story. Accordingly, the penthouse height complies with the Zoning Regulations and the Height Act.

### *Penthouse Setback*

Pursuant to Subtitle C § 1502.1(a)-(b), “penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof shall be setback from the edge of the roof upon which it is located” a distance equal to its height from the front and rear building walls. The penthouse must also be setback a distance equal to its height from the southern side wall. Although, the northern side wall abuts an empty lot; therefore, pursuant to Subtitle C § 1502.1(d), the penthouse may only be setback by a distance equal to one-half of the penthouse height from the northern side wall.

As shown on plans at Exhibit “A”, the penthouse is setback 10 feet from the front and rear building wall of the roof, which is a distance equal to the penthouse height. The side penthouse setbacks also comply, as the penthouse structure is setback 10 feet from the southern side wall and 5 feet – equal to one-half the penthouse height – from the northern side wall. Therefore, the Project will include penthouse setbacks that satisfy the Zoning Regulations.

### *Floor area ratio (FAR)*

Under Subtitle H § 802.1, the maximum permitted FAR for a building located in the NC-7 zone is 2.5, which can be increased to 3.0 with Inclusionary Zoning. As will be discussed below, this Project incorporates Inclusionary Zoning. The Property has a total land area of 4,723 square feet. The Project proposes a maximum of 10,163 square feet of gross floor area, which constitutes an approximate FAR of 2.15. In accordance with the definition of “gross floor area” under Subtitle B, the calculated gross floor area does not include the cellar space.

Additionally, the proposed design includes 1,119 square feet of penthouse habitable space. Pursuant to Subtitle C § 1503.1(c), penthouse habitable space with a floor area ratio of less than four-tenths (.4) shall not be included in the overall FAR calculation.

Thus, the FAR of 2.15 complies with the requirement for the NC-7 zone.

### *Lot Occupancy*

Subtitle H § 804.1 establishes a maximum lot occupancy of 70% for a residential use in the NC-7 Zone District, which can be increased to 75% with Inclusionary Zoning. 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 3,542 square feet of land area, which is lot occupancy of approximately 75%.

### *Rear Yard*

Pursuant to Subtitle H § 705.3 a property in the NC-7 zone must provide a rear yard of 15 feet. The Project provides a rear yard of 30’3”, which complies with this requirement.

### *Side Yard*

Under Subtitle H § 806.1, no side yard is required for the Project.

### *Closed Court*

The Project proposes a closed court in the interior of the Project, as illustrated in Exhibit “A”. Under Subtitle H § 807.1, a closed court in the NC-7 zone for a residential use with more than three units must have a minimum width of four (4) inches per foot of court height and no less than 15 feet of width. On the first floor of the Project, the bounding walls of the closed court are proposed to be a maximum of 14 feet. Therefore, the minimum width of the court is 4’8” feet (14 feet x 4/12 = 4’8”). As shown on the proposed plans, the court has a minimum width of 15’6<sup>1/2</sup>”. The closed court maintains a width of 15’6<sup>1/2</sup>” on all floors. The height of the cellar, second floor, third floor and fourth floor are all less than that of the first floor. Accordingly, the minimum court width for the cellar, second floor, third floor and fourth floor is compliant as well. Under Subtitle H § 807.1, the Project, which has a court area of 350 square feet on each floor, complies with the minimum court area requirement of 350 square feet. Accordingly, the proposed closed court satisfies the zone’s minimum width and area requirements.

### *Cellar*

The zoning regulations define a cellar as the “portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.” As depicted in the plans attached at Exhibit “A”, the cellar’s ceiling is 3’11” above the adjacent finished grade. Additionally, it has long been the practice of this office to permit habitable units in a cellar. Therefore, the proposed cellar complies with the zoning regulations.

### *Vehicle Parking*

Under Subtitle C § 701.5, a residential, multiple dwelling development must provide one parking space per three dwelling units in excess of four units. In the NC-7 zone, the parking requirement may be reduced by 50% if the site is located “[w]ithin one-half mile (0.5 mi.) of a Metrorail station that is currently in operation . . .” See Subtitle C § 702.1(a).

As represented in the attached plans, the Project proposes 15 dwelling units, which would have a minimum of 4 parking spaces; However, this requirement is reduced by 50% because the Project is located within one-half mile of the Georgia Avenue Metrorail Station. Accordingly, the Project must provide a minimum of 2 parking spaces for the residential use.

The Project proposes 7 parking spaces, which exceeds the minimum parking requirement.

#### *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. Since the Project proposes 15 units and, accordingly, 5 long-term bicycle parking spaces are required.

The Project provides 5 long-term bicycle parking spaces, which complies with the bicycle parking requirement.

#### *Driveway*

The driveway accessing the parking garage is 12 feet in width. Under Subtitle C § 711.6, a driveway within 20 feet of a street lot line must be at least 12 feet wide for one-way traffic. Here, the driveway provides one-way access to the parking garage and, accordingly, the proposed driveway width complies with the Zoning Regulations.

#### *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 16 dwelling units, and, accordingly, loading is not required.

#### *Green Area Ratio (GAR)*

Under Subtitle G § 707.1, the GAR requirement in the NC-7 zone is 0.30. The Project will have green area of approximately 1,480 square feet, which is a GAR of .31. Therefore, the Project will satisfy the GAR requirement.

#### *Inclusionary Zoning*

Subtitle C § 1001.2(b) states that a development will be subject to IZ requirements when a project proposes new gross floor area that results in ten or more dwelling units. Here, the Project proposes 15 dwelling units and, therefore, will be required to comply with IZ.

Pursuant to Subtitle C § 1003.1, the IZ set-aside requirement for a project that does not use steel would be 10% of the gross floor area dedicated to residential use, including penthouse habitable space, or 75% of the achievable bonus density, whichever is greater. If the building does use

steel then the IZ set aside is reduced to the greater of 8% of the gross floor area dedicated to residential use, including penthouse habitable space or 50% of the achievable bonus density.

An amendment to the IZ regulations has been adopted by the Zoning Commission as case number 04-33G. This amendment calls for, among other things, changes to the IZ set asides. Under the amendment, if a building does not employ Type I construction, as that term is defined in the Construction Code, then the IZ set aside is 10% of the Project's GFA dedicated to residential use or 75% of achievable bonus density plus area equal to 10% of penthouse habitable space. Alternatively, if a building does employ Type I construction, as that term is defined in the Construction Code, then the IZ set aside is 8% of the Project's GFA dedicated to residential use or 50% of achievable bonus density plus 8% of penthouse habitable space. Furthermore, for rental units, the IZ set aside must be dedicated to households earning equal to or less than 60% of Median Family Income.

The Project, which will not employ Type I construction, has approximately 12,498 square feet of gross floor area dedicated to residential use. Your client will set aside approximately 1,383 square feet of residential units for IZ, which is 11% of the gross floor area dedicated to residential use. Based upon the attached site plans, the Project will set aside the requisite amount of gross floor area to comply with the IZ zoning requirements.

#### **The Project complies with the design requirements for the Georgia Avenue neighborhood mixed-use zones**

Under Subtitle H § 809.1, the Project must incorporate certain design requirements because the Property is within the Georgia Avenue neighborhood mixed-use zone. Per the plans attached as Exhibit "A", the Project is designed so that no less than 75% of the street wall at ground level abuts the property line along Georgia Avenue as set forth in § 809.1(a).

Pursuant to § 809.1(d), the Project must also devote "not less than fifty (50%) of the surface area of the street wall at the ground level to entrances to commercial uses or to the building's main lobby," and the windows on the street wall shall have "clear or clear/low emissivity glass." Here, the Project, as reflected in Exhibit "A", complies with this design requirement because the Project dedicates 50% of the street wall at the ground level to the building's main lobby.

In accordance with § 809.1(f), the ground floor of the Project has a "uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.)." As noted above, the first level of the Project measures 14 feet in height. The Project has been designed so as to not preclude an entrance every forty feet along Georgia Avenue as required by § 809.1(i). Finally, the Project has off-street parking in the rear yard and below grade as permitted by § 809.1(j).


#### **Conclusion**

Based on the review of the attached plans and exhibits, the Project on the Property complies with the NC-7 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 Exhibit "A". Please let me know if you have any further questions.

This determination letter constitutes the first writing reflecting the administrative decision. 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,

A handwritten signature in cursive script, reading "Matthew Le Grant", written over a horizontal line.

Matthew Le Grant  
Zoning Administrator

Attachments: Exhibit A: Architectural Plans