

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



July 21, 2017

Meridith Moldenhauer  
Counsel | Cozen O'Connor  
1200 19th Street NW  
Washington, DC 20036

**Re: 3431 13<sup>th</sup> Street, NW - Square 2839, Lot 0821 (the “Property”)**

Dear Ms. Moldenhauer,

This letter is in reference to discussions I have had with you, your client, and the architect at meetings on December 15, 2016 and April 26, 2017 regarding your client’s intended residential development at the Property.

The Property, which is located in the RF-1 zone, is known as Lot 0821 in Square 2839. Square 2839 is bounded by Monroe Street, NW to the north, 11<sup>th</sup> Street, NW to the east, Park Road, NW to the south and 13 Street, NW to the west. Lot 0821 has a total land area of 7,376 square feet.

The Property is bounded by 13<sup>th</sup> Street to the east, Monroe Street to the north, Lot 67 to the west and Lot 827 to the south. The Property satisfies the definition of a “corner lot” at Subtitle B § 100.2 because it fronts on 13th Street and Monroe Streets, and those streets form an angle of forty-five degrees (45°) up to and including one hundred thirty-five degrees (135°).

The Property is improved by the Mt. Rona Missionary Baptist Church. The church was constructed circa 1919 and has been renovated since then. The church is not historically designated, and the Property is not located in an historic district. The area nearby the Property has several larger buildings, including a three-story apartment house next door on 13<sup>th</sup> Street and two, five-story apartment houses directly across Monroe Street.

Your client proposes to convert the existing, non-residential structure to an eight-unit apartment house as a matter-of-right (the “Project”). As part of the Project, the church’s existing tower, peaked eaves/gabled roof, cornices, roof top architectural embellishments, perimeter walls, and building footprint will be retained. Your client intends to raise the flat areas between the roof’s peaked eaves from the current 27’-4” to 35’-0” in height to allow for the addition of residential units. The Project will front on 13<sup>th</sup> Street, which has been selected as the zoning “front”. Conceptual plans for the Project are attached here at **Exhibit “A”**.

In summary, at our meetings, I found the following:

**The Project meets the zoning requirements to be converted from a non-residential building to a residential building**

In the RF-1 zone, pursuant to Subtitle U § 301.2<sup>1</sup>, an existing non-residential building may be converted to an apartment house as a matter-of-right, subject to the following conditions:

*301.2(a) – The building or structure to be converted is in existence on the property at the time of filing an application for a building permit;*

As noted above, the Property is currently improved with the Mt. Rona Missionary Baptist Church, which is non-residential.

*301.2(b) – The maximum height of any addition to the existing structure shall not exceed thirty-five feet (35 ft.);*

As shown on the Zoning Elevations and Section Diagram at page 10 of **Exhibit “A”** (the “Elevation”), the Project proposes increasing the height on the flat sections of the roof to 35 feet in height. A more detailed discussion of the Project’s height can be found in the general “height” section below.

*301.2(c) – There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

Based on the Surveys included at pages 6-7 of **Exhibit “A”** the total land area of the Property is 7,376 square feet, which permits up to eight dwelling units (7,376 s.f. / 900 s.f. = 8.20). The Project proposes eight dwelling units. Accordingly, the Project complies with this condition.

*301.2(d) – An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;*

As reflected in the Site Zoning Diagram at page 8 attached in **Exhibit “A”** (the “Site Plan”), the Project will be constructed within the existing building footprint. Accordingly, the Project will not extend more than 10 feet past the furthest rear wall of an adjacent residential building.

*301.2(e) – A roof top architectural element original to the structure such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;*

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<sup>1</sup> Where applicable, citations to the zoning regulations reflect the language as amended in Zoning Commission case number 14-11B; Final Action was taken by the Zoning Commission on March 27, 2017.

The existing roof includes peaked eaves/gabled roofs, tower, pediment, cornices, and embellishment as shown on the photos on pages 2, 4-5 and the existing roof plan on page 14 of **Exhibit “A”** (the “Existing Roof Images”). This office has determined that these elements are “roof top architectural element original to the structure”, and accordingly must be retained pursuant to Subtitle U § 301.2(e). The Project does not propose to amend any elements that are determined to be “original” architectural elements.

The Existing Roof Images also illustrate that the roof includes flat sections (the “Flat Sections”) behind and between the peaked eaves/gabled roofs. The Flat Sections are not determined to be “roof top architectural elements”. Accordingly, the Flat Sections can be increased in height, as proposed.

Consequently, while the Flat Sections are being increased to 35’, the addition complies with Subtitle U § 301.2(e) because the peaked eaves/gabled roofs, tower, turrets, and cornices, which are deemed to be “roof top architectural elements original to the structure” will not be altered, as shown on the Proposed Roof Plan at page 19 of **Exhibit “A”**. The Property is not an interior lot, and that portion of the regulation does not apply to this Project.

*301.2(f) – Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;*

Based upon reviews of the “Existing Condition: Adjoining Property Roof View” photos at page 5 of **Exhibit “A”**, neither of the adjacent properties have chimneys or external vents. Therefore, the Project will not block or impede the functioning of a chimney or external vent on any adjacent property.

*301.2(g) – Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing or permitted solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this provision the following terms shall have the associated meaning:*

- (1) “Significantly interfere” shall mean an impact caused solely by the addition that decreases the energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator, and*
- (2) “Existing solar energy system” shall mean a system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or that an application for zoning relief or approval is officially accepted as complete by the Office of Zoning for consideration by the Board of Zoning Adjustment or Zoning Commission, either:*
  - (i) Legally permitted, installed and operating or*
  - (ii) Authorized by an issued permit provided that the permitted solar energy system is operative within six (6) months of the issuance of the solar*

*energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system.*

Based upon reviews of the “Existing Condition: Adjoining Property Roof View” photos at page 5 of **Exhibit “A”**, there are no existing solar energy systems on properties adjacent to the Project. Further, based on the PIVS form attached as **Exhibit “B”**, neither adjacent property has a legally permitted solar energy system as of the date of this letter.<sup>2</sup> Accordingly, the Project will not interfere with the operation of an existing or permitted solar energy system on an adjacent property.

*301.2(h) – An apartment house in an RF-1, RF-2, or RF-3 zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand, either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and Subtitle U § 320.3*

As stated above, the Property is currently a non-residential building, and has not been converted to an apartment house. Therefore, this provision does not apply.

In summation, the Project meets the conditions set forth in Subtitle U § 301.2, permitting the matter-of-right conversion of a non-residential church into a residential development with eight dwelling units.

#### **The Project complies with Subtitle E § 206.1 concerning roof top additions**

Subtitle E § 206.1 regulates roof top additions in the RF-1 zone. This subsection is relevant because the Project proposes an addition to the existing roof top, as depicted in **Exhibit “A”**.

*206.1(a) – A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure’s rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;*

As noted above, this requirement is satisfied. The Existing Roof Images show that the existing roof includes peaked eaves, tower, turrets, and cornices, which this office has determined to be “roof top architectural elements original to the building” as well as the Flat Sections, which are not. The Project only proposes changes to the Flat Sections, and the peaked eaves, tower, turrets, and cornices will not be altered, as shown on the Proposed Roof Plan at page 19 of **Exhibit “A”**. Accordingly, the Project complies with Subtitle E § 206.1(a), for the same reasons that it satisfies Subtitle U § 301.2(e) discussed above. The Property is not an interior lot, and that portion of the regulation does not apply to this Project.

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<sup>2</sup> The Owner is encouraged to include similar PIVS documentation at the time of building permit application submission.



*206.1(b) – Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; and*

As noted above, neither of the adjacent properties have chimneys or other external vents compliant with any District of Columbia municipal code. Therefore, the Project will not block or impede the functioning of a chimney or external vent on any adjacent property.

*206.1(c) – Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing or permitted solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this provision the following terms shall have the associated meaning:*

- (3) “Significantly interfere” shall mean an impact caused solely by the addition that decreases the energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator, and*
- (4) “Existing solar energy system” shall mean a system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or that an application for zoning relief or approval is officially accepted as complete by the Office of Zoning for consideration by the Board of Zoning Adjustment or Zoning Commission, either:*
  - (iii) Legally permitted, installed and operating or*
  - (iv) Authorized by an issued permit provided that the permitted solar energy system is operative within six (6) months of the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system.*

As noted above, neither adjacent building has an existing or permitted solar energy system. Therefore, the Project will not interfere with the operation of an existing or permitted solar energy system on an adjacent property.

### **The Project complies with the general zoning requirements in the RF-1 Zone**

#### *Height and Stories*

Pursuant to Subtitle E § 303.1, the maximum permitted building height in the RF-1 zone is 35 feet and three stories. Subtitle B § 308 governs rules of measurement for building height in the RF zone. Under Subtitle B § 308.2, the building height measuring point (“BHMP”) is established “at the existing grade at the mid-point of the building façade of the principal building that is closest to the street lot line.” Here, your client has selected the building façade facing 13<sup>th</sup>

Street, NW as the “front” of the building for the purposes of the BHMP. The BHMP is shown on the Elevations plan.

In the case of a building with a roof that is not flat, such as here, height is measured “from the BHMP to the average level between the highest eave, not including the eave of a dormer, and the highest point of the roof.” See Subtitle B § 308.4(a). As shown on the Elevations, the highest eave is 27’4” from the BHMP, and the highest point on the roof is 43’- 5 ½” in height. The average of those numbers is 35’- 4”. Accordingly, the existing church has an approximate height of 35’- 4”.

However, while the zoning height of the existing building is 35’- 4”, the maximum height of this Project is 35’ (which is the maximum height of the roof addition on the Flat Sections).

Furthermore, the Project will only be three stories in height, because the bottom level is deemed a “cellar”, as discussed below. Accordingly, the Project’s proposed 35’ height and three stories comply with the zoning regulations.

#### *Penthouse*

There is no residential penthouse on the existing structure or in the proposed plans for the Project. Any mechanical penthouse will need to satisfy the setback requirements.

#### *Floor area ratio (FAR)*

There is no FAR requirement in the RF-1 zone.

#### *Lot Occupancy*

For a project in which a building is converted to an apartment house in the RF-1 zone, Subtitle E § 304.1 dictates a maximum lot occupancy of “the greater of 60% or the lot occupancy as of the date of conversion.” 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.” Lot 821 has a land area of 7,376 square feet. The footprint of the existing church is 4,661 square feet, which equates to lot occupancy of 63%. Accordingly, the existing lot occupancy is compliant because it would be the “lot occupancy as of the date of conversion”, which is 63%. The Project does not propose any expansion of the existing building’s footprint.

However, Subtitle B § 312.6 states, “[w]hen adding a vertical addition to an existing building, each added story must comply with the required lot occupancy limitation.” Accordingly, the lot occupancy of the roof addition must comply with the 62% lot occupancy requirement. In this case, that requirement has been satisfied because, as shown on the Site Plan, the lot occupancy of the roof addition is 53.4%.

Accordingly, the lot occupancy requirements are satisfied.

### *Rear Yard*

Pursuant to Subtitle E § 306.1 a property in the RF-1 zone must provide a rear yard of 20 feet. The existing building has a rear yard of 4.3' to 7.2' feet, as shown on the Site Plan and the Survey at page 7 of **Exhibit "A"**. Additionally, Subtitle E § 205.3 provides that an extension or addition may be made into the required rear yard of a building existing on or before May 12, 1958 provided that the extension or addition shall be limited to that portion of the rear yard included in the building area in 1958. The existing rear yard is a non-conformity pursuant to Subtitle C § 201.2. Since the Project does not propose any enlargement or expansion of the nonconforming rear yard, the Project complies with the zoning requirements as to rear yards. *See* Subtitle C § 202.2.

### *Side Yard*

Pursuant to Subtitle E § 307. 2 and § 307.3, "a side yard shall not be required along a side street abutting a corner lot in an RF-1 zone", and "no side yard is required for a principal building; however, any side yard provided on any portion of a principal building shall be at least five feet (5 ft.) except as provided in this section." The exception is as follows: "In the case of a building existing on or before the effective date of this title, with a non-conforming side yard, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased and provided further, that the width of the existing side yard shall be a minimum of two feet (2 ft.)." *See* Subtitle E § 307.4.

As shown on the Site Plan and Survey at page 7, the existing structure has a side lot line along Monroe Street and another side lot line abutting Lot 827. While no side yard is required along Monroe Street pursuant to Subtitle E § 307. 2, a side yard of approximately 7'-6" at its narrowest is provided. That side yard will not be reduced or changed as part of the Project and Subtitle E § 307.4 is satisfied. There is no side yard abutting Lot 827. Rather, as will be discussed below, two, irregularly-shaped open courts have been created by the church's curved-wall design. Accordingly, there are no changes to a side yard in this location.

Therefore, the Project's side yards satisfy the requirements of the RF-1 Zone District.

### *Courts*

Due to the curved-wall design of the existing church, the Property has existing open courts along the property line abutting Lot 827. These courts satisfy the definition of an "open court" set out in Subtitle B § 100.2 because they are "unoccupied space, not a court niche open to the sky on the same lot with a building, which is bounded... by a single curved wall of a building" that "opens onto a street [or] yard...". As shown on the Site Plan, one of the courts opens onto 13<sup>th</sup> Street ("Court A"), and the other court opens onto the rear yard ("Court B").

Both courts are irregularly-shaped and non-rectangular in size. Accordingly, the width measurement is determined by the "diameter of the largest circle that may be inscribed in a

horizontal plane within the court.” Subtitle B §§ 100.2; 322.4. As shown on the Site Plan, based on the diameter of the largest circle, the width of Court B is 6.75’, and the width of Court A is 8’-0”.

Under Subtitle E § 203.1, an open court in the RF-1 zone for structures other than “Detached Dwellings; Semi-Detached Dwellings; Attached Dwellings and Flats” must have a minimum width of 2.5 inches per 1 ft. of height of court, but not less than 6 ft.

Court A’s width is compliant because it both satisfies the width requirement<sup>3</sup>, and there is no proposed increase in height of the bounding wall in this location. This is illustrated graphically on the “Court A Section” and “Court A Plan View” on page 9 of **Exhibit “A”**.

However, Court B becomes non-compliant as a result of the Project. On the west side, the increase in height from 28’4” to 35’ requires a minimum court width of 7.29’. (35’ proposed ht. x .2083 (2.5 in. of court width/12in. of building height) = 7.29’).

To address this difference (6.75’ width existing and 7.29’ width required), the Applicant is setting back the roof addition by .54’ (approximately 6”), in the areas above the open court as shown on “Court B Section” and “Court B Plan View” on page 9 of **Exhibit “A”**. In the past, my office has determined that similar “stacking courts” satisfy the court requirement. Accordingly, my office finds that the court requirement is satisfied in this case.

Finally, the area between the existing roof terrace and the proposed third level, as shown on the Site Plan will create an open court. The court will have a width of 11’-11” and the height of the roof at the third level will be 9’-8.” Accordingly, the required minimum court width is 6’ (9’-8” proposed ht. x .2083 = 2.01’; 6’ minimum required). Therefore, this 11’-11” wide court will exceed the minimum requirements for open courts.

Accordingly, my office finds that the court requirement is satisfied in this case.

### *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.” Subtitle B §100.2. Moreover, the zoning regulations establish “For the purpose of determining the maximum number of permitted stories, the term “story” shall not include cellars or penthouses.” Subtitle B §100.2. As shown on the Site Plan, the Project has a compliant cellar level because the ceiling of the lower level is 3’-0” above the adjacent grade along 13<sup>th</sup> Street at the BHMP. My office further confirms that habitable space may be located in the cellar level.

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<sup>3</sup> The height of the bounding wall on this portion of the building is 25’-6”. Accordingly, the required court width is 6’ (25’-6” x 2.5/ 12 = 5.33’, but the minimum court width is 6’).



### *Vehicle Parking*

Under Subtitle C § 701.5, a residential, multiple dwelling development in the RF zone must provide one parking space per two dwelling units. Under this requirement, the Project would be required to provide four parking spaces. However, as discussed below, pursuant to Subtitle C § 705.1, my office has determined that no parking spaces are required because the minimum number of parking spaces required for the proposed use (4) exceeds the number of spaces required for the prior church use.

Under Subtitle C § 701.5, a religious institution is required to provide one parking space for every ten seats of occupancy capacity in the main sanctuary. When the seating is not fixed, a “seat” is measured as every 7 square feet of space used for seating or every 18 inches of bench/pew length. As the existing church has pews, it is our Office’s practice to determine the parking requirement based on the pew length.

As shown on the “Required Parking Calculation” at page 15 of **Exhibit “A”**, the existing church has 276.5’ of total pew length in the main sanctuary. Therefore, the church was required to provide 19 parking spaces ( $276.5' / 18" = 185 \text{ Seats} / 10 = 19 \text{ Parking Spaces required}$ ).

Accordingly, pursuant to Subtitle C §§ 705.1 and 705.2, because the Project does not require more parking spaces (4 spaces) than would have needed to have been provided for the church use (19 spaces), the Project meets the zoning requirements for parking. Accordingly, no parking spaces are required.

### *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. The Project proposes eight dwelling units and, accordingly, is required to provide a minimum of three long-term bicycle parking spaces. The Project is not required to provide any short-term bicycle parking.

Per the “Proposed Lower Level” plan at page 16 of **Exhibit “A”**, the Project provides 3 long-term bicycle parking spaces located in a secure, bike-storage room with solid walls and locked doors in satisfaction of Subtitle C § 805.1. 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 eight dwelling units and, accordingly, no loading berth or service/delivery area is required.

### *Inclusionary Zoning*

Subtitle C § 1001.2 states that a development will be subject to IZ requirements when the project proposes new gross floor area that results in ten or more dwelling units, or the project proposes penthouse habitable space. Here, the Project proposes less than ten dwelling units, and the Project does not include penthouse habitable space. It follows that the Project is not required to set aside any Inclusionary Zoning units in accordance with the zoning regulations.

### *Pervious Surface*

Pursuant to Subtitle E § 204.1, a residential use on a lot larger than 1,800 square feet must provide 20% minimum pervious surface. The property will provide pervious surface of 25% (1,843 SF / 7,376 SF = 24.94). The Project therefore exceeds the minimum pervious surface requirement.

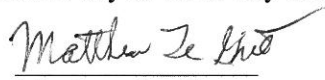
### **Conclusion**

Based on the review of the attached plans and exhibits, the Project on the Property complies with the RF-1 zone 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 substantially consistent with the plans attached to this letter at **Exhibit "A"**.

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.

Please let me know if you have any further questions.

Sincerely,

  
Matthew Le Grant  
Zoning Administrator

Attachments:

Exhibit "A": Architectural Plans  
Exhibit "B": PIVS reports for adjacent properties