



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

May 21, 2019

Charles H. Kehler
Altus Realty
1000 Potomac Avenue, N.W.
Washington, D.C. 20007

Re: 35 New York Avenue, N.E. (Square 671, Lot 16) - Determination Letter

Dear Mr. Kehler:

This is to confirm the substance of your discussions with Ramon Washington during the Preliminary Design Review Meeting ("PDRM") on April 19, 2019, relating to the building permit application for the development of 35 New York Avenue, N.E. (Square 671, Lot 16) (the "Property"). The Property is zoned D-5 and is not located within a Downtown Sub-Area. 11-I DCMR § 615.2. Although residential use is permitted, there is no requirement to provide residential use in the D-5 zone. 11 DCMR I-302.1. According to the building permit application, the Property will be developed with a building devoted to hotel use, which is permitted as a matter-of-right in the D-5 zone (the "Project"). See 11 DCMR I- 302.1; 11 DCMR U-515.1(a); 512.1(a), 510.1(o).

Height and FAR

The maximum permitted height for the Property is 130 feet based on Subtitle I-540.1 and the 1910 Height Act since the Property fronts on New York Avenue, N.E., which has a right-of-way width greater than or equal to 110 feet. As shown on the Zoning Summary attached hereto, the Project will have a height of 130 feet as measured from the level of the curb, opposite the middle of the front of the building, to the highest point of the roof or parapet, which is in compliance with Subtitle B-307 of the Zoning Regulations.

The maximum permitted non-residential floor area ratio ("FAR") of a building in the D-5 zone not employing credits as described below is 6.5 FAR. 11 DCMR I-539.3. As a result, based on a land area of 6,372 square feet, the maximum non-residential gross floor area permitted on the Property without employing credits is 41,418 square feet. Pursuant to the Certificate of Credit Transfer (Transfer Number One), recorded among the land records of the District of Columbia on December 21, 2018, as Instrument No. 2018128332 (the "Credit Certificate"), the Property is vested with 30,000 square feet of credits. As a result, the maximum non-residential gross floor area permitted on the Property is 71,418 square feet. According to Zoning Summary, the Project includes 70,200 square feet of non-residential gross floor area, or 11.2 FAR, which is within the

permitted gross floor area pursuant to the Credit Certificate. A copy of the Credit Certificate is attached hereto.

Penthouses

The maximum permitted height of a penthouse in the D-5 zone is 20 feet, and the maximum number of stories for penthouse habitable space is one plus a mezzanine. A second-story is permitted for penthouse mechanical space. 11 DCMR I-540.5. Penthouse mechanical space, communal recreation space, and penthouse habitable space of less than 0.4 FAR are all excluded from the FAR calculation for the building. 11-C DCMR § 1503.1. A penthouse may house mechanical equipment or any use permitted within the zone, except that a nightclub, bar, cocktail lounge, or restaurant use is only permitted as a special exception if approved by the Board of Zoning Adjustment. 11 DCMR C-1500.3(c). As shown on Zoning Summary, the Project includes a one-story mechanical penthouse with a maximum height of 10 feet, 3 inches, measured from the roof upon which the penthouse sits.

Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof must all meet the setback requirements set forth in Subtitle C-1502 of the Zoning Regulations. For the Project, a penthouse must be setback, as follows: (a) a distance equal to its height from the front building wall of the roof upon which it is located; and (b) a distance equal to its height from the rear building wall of the roof upon which it is located. 11 DCMR C-1502.1. As shown in the Zoning Summary, the Project includes a setback of 10 feet, 3 inches from both the front and rear building wall.

By e-mail dated April 23, 2019, this office previously confirmed that since the provided parapet is within the maximum permitted height for the D-5 zone, the 30% limitation for architectural embellishments in Subtitle C-1501.3 of the Zoning Regulations does not apply to the parapet. In addition, since the proposed penthouse does not include habitable space, the parapet is not a guardrail and subject to the setback requirements of Subtitle C-1502 *et seq.* of the Zoning Regulations. A copy of the e-mail confirmation is attached hereto.

Lot Occupancy

A building constructed in the D-5 zone may occupy 100% of its site. 11 DCMR I-205.2. The Zoning Summary indicates that the Project will occupy 97% of the Property.

Side Yard

No side yard is required for a principal structure in a D zone. 11-I DCMR § 206.1. The Zoning Summary indicates that the Project does not include a side yard.

Rear Yard

In the D zones a rear yard need not be provided for a through lot, which is defined as "an interior lot having frontage on two (2) or more streets where the streets differ in

direction by forty-five degrees (45°) or less." 11 DCMR B-100.2. Since the Property is a through lot, no rear yard is required. The Zoning Summary indicates that no rear yard is provided.

Courts

By e-mail dated April 23, 2019, this office reviewed the proposed court configuration and previously confirmed that the provided court complies with the minimum width and area requirements of the Zoning Regulations. A copy of the e-mail confirmation is attached hereto.

GAR

The GAR required in the D-5 zone is 0.2. 11 DCMR I-208.1. According to the plans submitted, the proposed development includes both extensive and intensive green roof, 1992 sf and 756 sf respectively. In addition to the green roof credit, the design includes plantings greater than 2-foot high at maturity which adds to the overall GAR score, totaling 0.388 out of a required 0.20 for zone D-5. The GAR Scorecard is included in the plans as Sheet L0100.

Vehicle Parking, Bicycle Parking, and Loading

Vehicle parking spaces are not required in D zones, other than areas west of the centerline of 20th Street, N.W. 11 DCMR I-212.1. As a result, no parking spaces are required. As shown on the Zoning Summary, the Project does not include any parking spaces and no parking mitigation is required.

Bicycle parking spaces are required for residential use and all non-residential uses with at least 4,000 square feet of gross floor area. For a lodging use, one long term bicycle space is required for every 10,000 square feet of gross floor area, and one short term bicycle space is required for every 40,000 square feet of gross floor area. 11 DCMR C-802.1. As a result, the Project requires 2 short-term bicycle spaces and 7 long-term bicycle spaces. As shown on the Zoning Summary, the Project includes 2 short-term and 7 long-term bicycle parking spaces.

The loading requirement for uses in the D-5 zone are set forth in Subtitle C § 901.1 of the Zoning Regulations. The loading requirement for lodging uses with 50,000 to 100,000 square feet of gross floor area is two loading berths. Each loading berth must be accompanied by a 100 square foot adjacent loading platform. 11 DCMR C-901.4. All loading berths must be a minimum of 12 feet wide, have a minimum depth of 30 feet, and have a minimum vertical clearance of 14 feet. 11 DCMR C-905.2. As shown on the Zoning Summary, the Project includes two loading berths at 12 feet x 30 feet, with a vertical clearance of 14 feet, and two adjacent platforms at 100 square feet.

Buildings requiring loading must also have a designated trash area either within the building **or within a loading berth** or within an accessory building or structure immediately adjacent to the loading area or within an enclosed receptacle in a designated trash area within the loading area. All new development over 2,000 square feet of gross

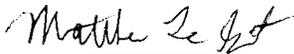
floor area, other than buildings with one or two dwelling units, must clearly show the area for the building's trash receptacles on the building plans. 11 DCMR C-907.1 (emphasis added). As shown on the enlarged loading plan, a trash area is provided within a loading berth in accordance with Subtitle C-907.1 of the Zoning Regulations.

Inclusionary Zoning

Hotel use is not subject to the Inclusionary Zoning ("IZ") requirements or bonuses of Subtitle C, Chapter 10. 11 DCMR C-1001.5(d). Because the Project does not include penthouse habitable space, the Project has no IZ requirement.

Based on the review of the foregoing, and the detailed review of the plans at the PDRM, this office finds that the Project complies with the requirements of the Zoning Regulations and without requirement for review by the Board of Zoning Adjustment. Upon submission of the building permit application, this office will approve a building permit application for the construction required for the Project, as shown on the plans reviewed during the PDRM.

Sincerely,



Matthew Le Grant
Zoning Administrator

Attachments:

- a) Zoning Summary
- b) Enlarged Loading Plan
- c) Credit Certificate
- d) March 22, 2019 E-Mail Confirmation

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.

Zoning Technician: Ramon Washington

File: Det Let re 35 New York Avenue, NE to Kehler on 4-29-2019