

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



November 8, 2016

Christy Moseley Shiker  
Holland & Knight LLP  
800 17<sup>th</sup> Street, N.W. - Suite 1100  
Washington, DC 20006

Re: Addition of 40 Patterson Street, NE to Single Building Development on Lot 260,  
Square 672 - Capitol Point South

Dear Ms. Shiker:

This is to confirm the substance of our discussions on September 30, 2016, regarding the proposed development of property located in the north half of Square 672. The north half of the square is bounded by N Street to the north, First Street to the east, Patterson Street to the south and North Capitol Street to the west in Northeast Washington. The development site is a single lot of record known as Lot 260 in Square 670 (the "Property"). The Property is comprised of four Assessment and Taxation Lots generally as shown on the attached and known as the following: Lot 859 (33 N Street, N.E.) ("33 N Residential Parcel"); Lot 860 (51 N Street, N.E.); Lot 861 (1250 First Street, N.E.); and Lot 862 (50 Patterson Street, N.E.) ("50 Patterson Property"). Lots 860, 861 and 862 are herein referenced as the "Mixed Use Parcel".

The Property is zoned D-5 under the Zoning Regulations in effect as of September 6, 2016 ("2016 Zoning Regulations"). Based on our previous review of the Property, the Mixed Use Parcel can be developed to a maximum height of 130 feet based on its frontage on First Street, N.E., which has a right of way width of 110 feet. The Mixed-Use Parcel will be developed with residential, retail, office and movie theater use ("Mixed Use Development") in accordance with the Board of Zoning Adjustment Order No. 19121-A ("Order No. 19121-A"). Order No. 19121-A granted variance relief from the parking and loading requirements in Sections 2101.1 and 2201.1 of the Zoning Regulations in effect as of the final date of the order ("1958 Zoning Regulations") and granted a special exception for penthouse setback relief from the Section 411 of the 1958 Zoning Regulations.

You now propose to subdivide the Property with Lot 253 in Square 672 (the "40 Patterson Property") to create a new record lot ("New Record Lot"). The New Record Lot would continue to have frontage on First Street, N.E., permitting a maximum height of building of 130 feet. We discussed two issues with respect to the proposed development on the New Record Lot.

### Vested Project Status

The Mixed Use Development was approved by the Board of Zoning Adjustment in Order No. 19121-A. Subtitle A § 102.3(a) provides that a building permit application filed after September 6, 2016, is considered a vested project if the building permit plans are consistent with, among other things, an unexpired approval of a variance or special exception approved by the Board of Zoning Adjustment, provided the vote to approve occurred prior to September 6, 2016. The vote in BZA Case No. 19121-A was taken on December 1, 2015. Thus, the Mixed Use Development is a vested project under the 2016 Zoning Regulations.

According to Subtitle A § 102.6, a vested project shall be subject only to the provisions of the 1958 Zoning Regulations. However, Subtitle A § 102.7 states that an approved amendment to a vested project that includes a physical building or structural addition shall be subject to the regulations in effect at the time of issuance of a building permit. Therefore, the addition of a portion of the building on the 40 Patterson Property (the “40 Patterson Development”) will not impact the vested project status of the development on the Mixed Use Parcel but the 40 Patterson Development will need to comply with the requirements of the 2016 Zoning Regulations.

In addition, you have confirmed that the 40 Patterson Development will not take advantage of the variance relief granted by Order No. 19121-A from the parking and loading requirements under the 1958 Zoning Regulations. With respect to the special exception to the penthouse setback requirements, relief will continue to be needed for the Mixed Use Development in the location shown on the plans approved by the Board of Zoning Adjustment in Order No. 19121-A (“Approved Plans”). Specifically, as shown on the Sheet S103 the Approved Plans at Exhibit 28C of the record for Case No. 19121, setback relief was required for the lot line abutting the 40 Patterson Property by virtue of Section 411.18(c)(3). With the inclusion of the 40 Patterson Property in the New Record Lot, setback relief continues to be required for the lot line abutting the 40 Patterson Property, assuming a setback of the east wall of the 40 Patterson Development from the lot line by virtue of Section 411.18(c)(5). Because the Mixed Use Development will be constructed as shown in the Approved Plans, I find that special exception approving the setback relief is not impacted and will approve building permit plans with a penthouse for the Mixed Use Development as shown on the Approved Plans Board on the New Record Lot.

### Single Building Connection

The improvements on the 33 N Residential Parcel and the Mixed-Use Parcel will be connected to create a single building on the Property as previously reviewed by this office (see attached Determination Letter of 8-17-13). The connections approved for those portions of the single building are based on the 1958 Zoning Regulations. The connection for the 40 Patterson Development to the Mixed Use Development must comply with the provisions of the 2016 Zoning Regulations.

Specifically, Subtitle B § 309.1 provides that structures that are separated from the ground up by common division walls or contain multiple sections separated horizontally, such as wings or additions, are separate buildings. Structures or sections shall be considered parts of a single building if they are joined by a connection that is:

- (a) Fully above grade;
- (b) Enclosed;
- (c) Heated and artificially lit; and
- (d) Either:
  - (1) Common space shared by users of all portions of the building, such as a lobby or recreation room, loading dock or service bay; or
  - (2) Space that is designed and used to provide free and unrestricted passage between separate portions of the building, such as an unrestricted doorway or walkway.

Based on the Connection Plan that you provided, a copy of which is attached, the proposed connection of the 40 Patterson Development to the Mixed Use Development will meet the requirements of Subtitle B § 309.1 because the following conditions are met: (a) The connection is fully-above grade; (b) The connection is enclosed; (c) The connection is heated and artificially lit; and (d) The connection is space that is designed and used to provide free and unrestricted passage between separate portions of the building. To constitute free and unrestricted access, each owner must have reciprocal access rights through the connection, although access is not required to be provided for occupants of the single building. I have reviewed the Connection Plan and have determined that the proposed connection will be sufficient to create a single building pursuant to Subtitle B § 309.1 of the 2016 Zoning Regulations.

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

Attachments: Connection Plan "Option B" dated 9-16-16  
BZA Order No. 19121-A  
Sheet 103 –Exhibit 28C of BZA Approved Plans  
Determination Letter of 8-17-13

File: Det Let re 40 Patterson St NE to Shiker 11-8-16