



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

November 13, 2018

Via Emailed PDF

Martin P. Sullivan
Sullivan & Barros, LLP
1155 15th Street, NW
Suite 1003
Washington, DC 20005

Re: 411 New York Avenue, NE (Square 3594, Lot 800).

Dear Mr. Sullivan:

This letter confirms our discussions regarding the proposed adaptive re-use of the property and improvements located at 411 New York Avenue, NE (Square 3594, Lot 800) (the "Property"). The Property is located in the PDR-1 zone district and consists of land area of 14,000 square feet and includes a four-story building (the "Building") which was constructed in 1935.¹ The Property is designated under the Comprehensive Plan's Future Land Use Map as high-density residential/high-density commercial/production. The Property was recently the subject of a PUD approval in Zoning Commission Case No. 15-19 (the "PUD"), in which the Commission approved a map amendment to C-3-C (MU-9), and approved a new 11-story, 7.8 FAR, building for use as a hotel. Per our discussion, the owner is now instead contemplating the adaptive re-use of the existing Building. In this event, the approved PUD would be vacated, and the zoning would revert to the underlying PDR-1 zone district.

Proposed Use.

You are proposing to renovate the existing Building and use it for a form of lodging use. Lodging is a permitted use in the PDR-1 zone district, pursuant to Section U-801.1(o) of the Zoning Regulations. Pursuant to the Use Categories section of the Zoning Regulations (Subtitle B), Lodging is described as a "use providing customers with temporary housing for an agreed upon term of less than thirty (30) consecutive days; any use where temporary housing is offered to the public for compensation and is open to transient rather than permanent guests." This section provides further that: "Examples include, but are not limited to: hotels, motels, inns, hostels, or bed and breakfast establishments."

In the PDR-1 zone district, the maximum permitted FAR is 3.5. However, the maximum permitted FAR is restricted to 2.0 for certain uses. The Development Standards section of Subtitle J, for the PDR zone district, identify a list of uses which are granted 3.5 FAR, and all other permitted uses are limited to a FAR of 2.0. The list of uses afforded a FAR of 3.5 does not include "Lodging." As a result, any new construction on the Property would restrict Lodging use to a maximum of 2.0 FAR. Furthermore, if the proposed use of the existing Gross Floor Area in

¹ There is also an alley closing in progress, after which the Property will consist of 15,000 square feet.

the Building will exceed 2.0 FAR of Lodging use (or any other permitted-but-restricted use), then any subsequent increase in Gross Floor Area could not be used for any permitted-but-restricted use. If the overall FAR did not exceed 3.5, then added Gross Floor Area could be used for a permitted-but-not-restricted use.

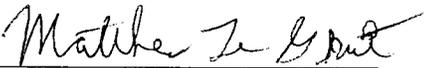
You have represented that you are not proposing to add any Gross Floor Area to the existing Building. The proposal is to renovate the existing space and to have lodging as the principal use. You have represented that the estimated Gross Floor Area of the existing Building is approximately 40,000 square feet, which would result in a FAR of 2.7. You have asked for my determination that the lodging use would be permissible in the existing Gross Floor Area of the Building.

I have also reviewed the available certificate of occupancy history for the Building. The uses in this C of O history primarily include retail, service, and office uses, all of which are considered permitted uses with a restricted FAR limit, as is the proposed lodging use. The list and copies of the C of O history is attached hereto as Exhibit A. I understand that the Building has been in use since 1935, so there were likely more uses in this Building than is represented in this C of O history. But based on your representations that the most recent uses in the Building which you are aware of were also retail, service, or office uses, it is my opinion that the large majority of uses in this Building over the years have been uses which are now known as “restricted-FAR” uses under the PDR-1 Development Standards regulations. Your proposed lodging use would continue that legally nonconforming situation.

I therefore confirm that you may use the Building’s existing Gross Floor Area for lodging use. I have considered several factors in making this determination, including the fact that the Building was constructed prior to 1958. The previous uses in the Building, as represented by the attached certificates of occupancy, were primarily uses which, like lodging, also fell into the restricted FAR category, including retail, office, and services uses. As such, the adaptive re-use from one FAR-restricted use to another is permissible for the existing Gross Floor Area, as these uses are of a similar character, in particular because they share the FAR-restricted use category, and you would not be creating any new nonconformity. Furthermore, the provision in the Zoning Regulations that discusses restricted FAR limits is included in the “Development Standards” section of the Zoning Regulations, rather than in the “Use” provisions in Subtitle U. As such, I have found that this restriction is a function of the area standards of an existing Building, and not directly a use standard.

For these reasons, I have determined that the Building’s entire existing Gross Floor Area may be converted to lodging use.

Please feel free to contact me if you have any questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Disclaimer: This letter is issued in reliance upon, and therefore limited to, the questions asked, and 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-302.1 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 provision established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

Exhibit A: Listing of COOs