

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

November 20, 2017

Samantha Mazo
Cozen O'Connor
1200 19th Street NW
Washington, DC 20036



Re: 4804 Georgia Avenue NW - Square 2922, Lot 40 (the "Property")

Dear Ms. Mazo,

This letter is in reference to the meeting you, your client and their architect had with my office on September 13, 2017 regarding your client's intended residential development at the Property (the "Project"). You and I also briefly discussed the Property on October 12, 2017.

The Property is known as Lot 40 in Square 2922 and has a total land area of 4,500 s.f. It is located mid-block of the 4800 block of Georgia Avenue between Decatur Street to the south and Delafield Place to the north. The Property fronts on Georgia Avenue and is bounded by a public alley to the rear.

The Property is located in the MU-4 Zone District, and land abutting the Property is similarly zoned MU-4. A copy of the Zoning Map is attached here at Exhibit "A". The purpose of the MU-4 zone is to permit moderate-density, mixed-use development and to "[p]rovide facilities for shopping and business needs, **housing**, and mixed uses for large segments of the District of Columbia outside of the central core." See 11 DCMR Subtitle G § 400.3(b), ***emphasis added***.

The Property is a rectangular-shaped lot that has street frontage on Georgia Avenue and access from the rear alley. The Property has been the location of the Grace Murray Funeral Home. The Property is bounded to the north and south by MU-4 zoned-properties. The property to the south has a Certificate of Occupancy for a 22-unit apartment building issued in 2014, and a section of that building is face on line with the Property's southern lot line. To the north, the property has been used commercially, including recently for a ballet school.

The Project proposes to demolish the existing Funeral Home building and construct a new 18-unit apartment house. The Project would be built up to portions of the north and south lot line(s). It would provide sufficient on-site parking spaces and bike spaces, as well as residential amenity space. The Project's conceptual plans are attached as Exhibit "B".

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

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Phone: (202) 442-4576 Fax: (202) 442-4871

The Project on the Property complies with both the Current Zoning Regulations¹ and the Proposed Changes to the Zoning Regulations Suggested in Zoning Text Amendment No. 17-18 (the “ZTA”)²

Uses

Multiple dwelling uses are permitted as a matter-of-right in the MU-4 zone. *See*, Subtitle U § 512.1(a).

Height

Pursuant to Subtitle G § 403.1, the maximum permitted building height in the MU-4 zone is 50 feet. In accordance with Subtitle B § 307.1, the height for the Project will be measured from the top of the curb, projected from the center of the front property line along Georgia Avenue (the “BHMP”), to the top of the main parapet.

As shown on Sheet 9 of Exhibit “B”, the Project height is no more than 50’. Therefore, the proposed Project complies with the height requirement.

Penthouse Height

Under Subtitle G § 403.2, the maximum permitted penthouse height in the MU-4 Zone District is 12 feet, except 15 feet for penthouse mechanical space. Height is measured to the top of the penthouse parapet. This zone permits habitable penthouse uses in one story plus a mezzanine and a second story for mechanical space.

As shown on Sheets 9-10 and 19-22 of Exhibit “B”, the Project proposes an approximately 12’-tall habitable penthouse measured to the penthouse parapet. Accordingly, the maximum height of the penthouse is permitted in the MU-4 zone.

The Project also proposes mechanical equipment that would not exceed 4’ in height. The mechanical equipment will not be enclosed in a structure, and accordingly are not deemed to be a “penthouse” pursuant to the definition of that term set out at Subtitle B § 100.2.

¹ The current Zoning Regulations are 11 DCMR effective September 6, 2016, as amended. As referenced here, the term “Zoning Regulations” indicates those regulations that have been adopted as of the date this letter is issued.

² Introduced by the Office of Planning (“OP”) on October 6, 2017, the ZTA proposes certain amendments to Subtitles B, D-F, J & K, Definitions and Rules of Measurement. A copy of OP’s October 6 Staff Report with the proposed ZTA language is attached here at Exhibit “C”. Review and approval of the ZTA is pending. In regards to this Project, the ZTA’s most relevant proposed changes relate to the definition of “cellar”. Therefore, while the ZTA may not be adopted entirely as introduced, in preparing this Zoning Determination letter this office reviewed the draft ZTA language at Exhibit “C”. In so doing, this office has determined that the Project would satisfy the ZTA. Accordingly, if the ZTA is adopted prior to issuance of a building permit for the Project, the Project could be permitted and constructed as a matter of right.

Penthouse Setback

Subtitle C § 1502.1 (a) and (b) require a setback at 1:1 ratio from the front and rear building wall of the roof upon which it is located. As shown on Sheet 8 of Exhibit “B”, the proposed penthouse will be setback approximately 13’ from the front roof wall and 12’-8” from the rear roof walls. Pursuant to Subtitle C § 1502.1 (d); a 1:1/2 side setback is required from the northern side roof wall because that portion of the Project does not adjoin another building. Here, a side-setback of 7’ is proposed from the northern side roof, thereby satisfying the requirement. No side penthouse setback is required from the adjacent property to the south (Lot 46). That lot is also zoned MU-4, and a portion of the Project adjoins that building’s face-on-lot-line wall.

Accordingly, the proposed penthouse setbacks satisfy the penthouse setback requirements of Subtitle C § 1502.1 (a), (b) and (c).

The penthouse mechanical equipment and any screening and/or guard rails required by Title 12 of the DCMR would also satisfy the setback requirements of Subtitle C § 1502.1.

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. The ZTA proposes a change to the “cellar” definition to read, “that portion of a story partly below grade where the finished floor of the ground floor is less than five feet (5 ft.) above the adjacent natural or finished grade, whichever is lower in elevation.”

In this instance, the Project’s proposed lower level would satisfy both the “cellar” definitions of the Zoning Regulations and the ZTA. In this instance, the adjacent “natural” and “finished” grades are the same and are identified on Sheet 9 as “concrete sidewalk”.

Specifically, Sheets 9-10 and 19-22 show:

- that the distance between the adjacent grade and the ceiling of the ground level is 3’-5”, which is less than 4 feet, thereby satisfying the “cellar” definition of Zoning Regulations; and
- that the distance between the adjacent grade and the finished floor of the ground floor is 4’-10”, which is less than five feet (5 ft.), thereby satisfying the “cellar” definition of the ZTA.

Accordingly, the lower level would be a “cellar”. For the reasons stated below, this cellar area does not contribute to FAR.

Floor Area Ratio (FAR)

Under Subtitle G § 402.1, the maximum permitted FAR for a building located in the MU-4 zone is 2.5 FAR, which can be increased to 3.0 FAR with Inclusionary Zoning (“IZ”). As will be

discussed below, this Project is subject to the IZ requirements, and will provide the requisite IZ set aside; thus, this Project is entitled to obtain the IZ bonus density. The Property has a total land area of 4,500 square feet. The Project proposes a maximum of 13,500 square feet of gross floor area (“GFA”), which constitutes an approximate 3.0 FAR. Therefore, the FAR provided complies with the requirement for the MU-4 zone.

Notably, for the purposes of calculating GFA, and therefore, FAR, the Zoning Regulations expressly state that “GFA shall not include *cellars*...” Accordingly, cellar areas are not included in the calculation of FAR, and the Project’s cellar is not chargeable to the Project’s FAR.³

Further, the inclusion of front and rear window wells does not increase the GFA because those area are less than 4’ in depth as measured from the structure to the rear of the window well, as shown on Sheet 9.⁴

Also, pursuant to Subtitle C § 1503.1(c), up to 0.4 FAR of penthouse habitable space does not contribute to the FAR permitted for a building. The Project’s proposed penthouse gross square footage is 1,800 g.s.f., which corresponds to an approximate FAR of 0.4. Therefore, the proposed penthouse does not contribute to total FAR for the Project.

Finally, pursuant to Subtitle B § 100.2, GFA “shall not include exterior balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building, ***all projections beyond the lot line that may be allowed by other Municipal codes***, vent shafts, and pipe chase shafts above the ground floor, atriums above the ground floor, ramps on the ground floor leading down to areas of parking on a lower level;” (***emphasis added***). Thus, square footage associated with bay window projections shall not be counted toward the Project’s FAR.

Lot Occupancy

Under Subtitle G § 404.1, the maximum lot occupancy for a building located in the MU-4 zone is 60%, which can be increased to 75% with IZ. As discussed, the Project is eligible for the IZ bonus density. 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 at Sheet 8 show a maximum Project size of 3,375 square feet of land area, which is a maximum lot occupancy of approximately 75%. This lot occupancy complies with the requirement for the MU-4 zone.

³ This office notes that the ZTA proposes to remove the inclusionary and exclusionary language from the GFA definition and relocate that language to the Rules of Measurement for GFA at Subtitle B § 304.7. This proposed relocation does not impact the effect. Accordingly, under the ZTA, cellar area and all projections beyond the lot lines would remain non-chargeable to FAR.

⁴ The ZTA proposes a clarification to the definition of the term “Finished Grade” to memorialize this office’s long-standing interpretation that window wells that were less than 4’ deep did not change the grade to create new GFA. Specifically, the ZTA states, “exception to finished grade are: i) a window well that projects no more than four feet (4 ft) from the building face.”

Rear Yard

The property line between the Project and the alley is the rear lot line. Pursuant to Subtitle G § 405.2 a property in the MU-4 zone must provide a rear yard of 15 feet. As to where a lot abuts an alley, then the requirements of Subtitle G § 405.5(a)(1-2) apply that read:

- (1) For that portion of the structure below a horizontal plane described in Subtitle G § 405.4 from the center line of the alley to the rear wall of the portion; and
- (2) For that portion of the structure above the horizontal plane described in Subtitle G § 405.4, from the rear lot line to the rear wall of that portion immediately above the plane.

In this case, the Project is providing an approximately 21'-7" rear setback on all floors as shown on Sheet 8. The provided rear yard complies with the requirement for the MU-4 zone.

Side Yard

Pursuant to Subtitle G § 406.1 "No side yard is required for a building or structure other than a detached single dwelling unit or semi-detached single dwelling unit; however, if a side yard is provided it shall be at least two inches (2 in.) wide for each one foot (1 ft.) of height of building but no less than five feet (5 ft.)." The Project provides no side yards. The provided side yard complies with the requirement for the MU-4 zone.

Courts

The Project proposes no courts, but court niches are proposed along Georgia Avenue as shown on Sheet 8 of Exhibit "B". A "court niche" is defined as "an indentation, recess, or decorative architectural treatment of the exterior wall of a building, not a court, which opens onto a street, yard, alley, or court" Subtitle B § 100.2. The MU-4 Zone District does not have court niche width and depth requirements. Accordingly, the proposed court niches are permitted as a matter of right.

Vehicle Parking

Under Subtitle C § 701.5, a residential, multiple dwelling requires 1 space per 3 units in excess of 4 units. The Property is located within 0.25 miles of Metrobus Route 79, which is identified as a "Priority Corridor Network" Metrobus Route under Subtitle C § 702.1(c)(1). Further, as required by Subtitle C § 702.1(c), the District's Department of Transportation ("DDOT") has issued written confirmation that the Property is located on a block that does not participate in the RPP program. An e-mail from DDOT is attached hereto at "Exhibit D". Accordingly, the Project is entitled to the 50% transit reduction pursuant to Subtitle C § 702.1(c)(1).⁵

⁵ DDOT has confirmed that while the Property could be eligible for RPP, such designation could not be applied because of the existence of metered parking in front of the building. See Exhibit "D".

As represented in the attached plans, the Project proposes 18 units, which would require a minimum of 5 parking spaces for the residential use. As a result of the 50% reduction noted above, the Project is only required to provide 3 parking spaces. The Project meets the parking requirement because it proposes 4 parking spaces.

Pursuant to Subtitle C § 712.3, a minimum of 50% of a building's parking requirement must be full-sized, 9'x18' parking spaces. The remainder may consist of compact 8'x16' parking spaces. Your client confirmed that the parking spaces will meet these size requirements, as shown on Sheet 8 of Exhibit "B".

Pursuant to Subtitle C § 714.1, screening is required for any external surface parking spaces, subject to exceptions not applicable in this case. Subtitle C § 714.2 provides the methods by which the screening requirements can be met, and my office finds that these are satisfied by the provision of a roll-up door.

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 18 units and, accordingly, is required to provide a maximum of 6 long-term bicycle parking spaces and no short-term bicycle parking spaces.

The Project provides the necessary long-term bicycle parking spaces in a dedicated bike room in the lower level as shown on Sheet 12 at Exhibit "B". 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 18 dwelling units. Accordingly, no loading is required.

Green Area Ratio (GAR)

Under Subtitle G § 707.1, the GAR requirement in the MU-4 zone is 0.30. The Project will satisfy the GAR as required through the provision of 4" green roof, planting areas and permeable pavers as shown on Sheet 11 of Exhibit "B".

Inclusionary Zoning

Subtitle C § 1001.2(c) requires that a development would be subject to IZ requirements when the proposed project would have ten or more new dwelling units constructed concurrently or in phases, on contiguous lots or lots divided by an alley if such lots were under common ownership, control, or affiliation within one year before the application for the first building permit.

Pursuant to Subtitle C § 1003.1, a wood-framed/“stick-built” inclusionary development that does not employ Type I construction to construct a majority of dwelling units and which is located in a zone with a by-right height limit of 50 ft. or less is required to provide the greater of the below as IZ units:

- 10% of the gross floor area dedicated to residential use including penthouse habitable space;⁶ or
- 75% of its achievable bonus density to inclusionary units plus an area equal to 10% of the penthouse habitable space.

Pursuant to Subtitle C § 1003.2, a steel/concrete inclusionary development that employs Type I construction to construct the majority of dwelling units is required to provide the greater of the below as IZ units:

- 8% of the gross floor area dedicated to residential use including penthouse habitable space; or
- 50% of its achievable bonus density to inclusionary units plus an area equal to 8% of the penthouse habitable space.

The current Median Family Income (“MFI”) in the Washington Metropolitan Statistical Area is \$110,300 for a household of four. As detailed in Subtitle C § 1003.3, for-rent inclusionary units are reserved for families earning 60% of MFI. For-sale inclusionary units are reserved for families earning 80% of the MFI. Finally, inclusionary units resulting from the penthouse habitable space would be reserved for families earning equal to or less than 50% of the MFI. Further, the penthouse inclusionary zoning requirement could be met by a contribution into the housing trust fund consistent with the formula set out in Subtitle C § 1505.13 through § 1505.16.

Here, the Project proposes a total of 18 dwelling units. Accordingly, the Project will be required to comply with IZ. The maximum square footage allocated to IZ units required for the Project will be determined when your client makes a final selection on the type of construction for the Project. Please coordinate with the Department of Housing and Community Development as necessary regarding the drafting and recordation of the IZ covenant.

Conclusion

Based on the review of the attached plans and exhibits, the Project on the Property complies with the MU-4 Zone District requirements, as well as text amendments to the Zoning Regulations proposed in ZTA 17-18, as shown on the OP Staff report included here at Exhibit “C”. Accordingly, the Project may be permitted as a matter-of-right.

⁶ We note that pursuant to Subtitle C § 1003.9, “An inclusionary development’s entire residential floor area including dwelling units located in cellar space or enclosed building projections that extend into public space, shall be included for purposes of calculating the minimum set-aside requirements of Subtitle C §§ 1003.1 and 1003.2.”

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 "B". 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 black ink, appearing to read "Matthew Le Grant", with a stylized flourish at the end.

Matthew Le Grant
Zoning Administrator

Attachments:

Exhibit "A": Zoning Map

Exhibit "B": Preliminary Architectural Plans

Exhibit "C": OP Staff Report for ZTA No. 17-18 as introduced on October 6, 2017.

Exhibit "D": Email from D.C. Department of Transportation