



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

September 10, 2020

**VIA EMAILED PDF**

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Re: 4865 MacArthur Boulevard, N.W. – Proposed CCRC Use

Dear Ms. Brown:

This letter confirms our discussions on April 8 and August 10, 2020, held via WebEx with you, members of the Trammell Crow Co. development team and Perkins Eastman Architects, regarding the proposed continuing care retirement community ("CCRC") at 4865 MacArthur Boulevard, N.W. (Square 1389, Lot 25). The property is located in the MU-4 and R-1-B Districts, as shown on the zoning map attached as Exhibit A. Lot 25 is a through lot with frontage on U Street, N.W., MacArthur Boulevard, N.W., 48<sup>th</sup> Place, N.W., and V Street, N.W. The proposed CCRC would be constructed as a single building spanning both zone districts and provide both independent living and assisted living units. You indicated that you would be seeking special exception relief to establish the CCRC use only for the portion of the building in the R-1-B District. CCRC and retail uses are permitted as a matter-of-right in the MU-4 portion of the site and no zoning relief is required or sought for that part of the building. Since the time of our April meeting, you filed the application with the Board of Zoning Adjustment on May 20, 2020 (BZA Application No. 20308). During our two WebEx meetings, we discussed the following zoning regulations applicable to the project and I hereby confirm for you my interpretation regarding these matters.

1. The Ten Proposed Independent Living Units Will Trigger the Inclusionary Zoning ("IZ") Requirements and All Ten Units May Be Designated as IZ Units to Satisfy the IZ Square Footage.

In one programming scenario, the proposed CCRC use in the MU-4 portion of the site would provide exactly ten independent living units with kitchens and the remaining 104 units would be devoted to assisted living units, including memory care. You have asked me to determine whether these ten units can all be designated as inclusionary zoning ("IZ") units to satisfy the IZ requirement. As discussed below, I confirm for you that all ten units may be designated as IZ units within the parameters of the information you provided me.

While assisted living units are exempt from the inclusionary zoning ("IZ") provisions under Subtitle C § 1001.6(b), *independent* living units are not and the ten units would trigger

compliance with the IZ requirements pursuant to Subtitle C § 1001.2(c).<sup>1</sup> You informed me that the project would avail itself of the 20 percent bonus density under Subtitle C § 1002.3. However, eight percent of the total gross floor area devoted to residential use generates more IZ units than 50 percent of the bonus density. As shown on the draft Certificate of Inclusionary Zoning Compliance (“CIZC”) and CIZC Penthouse Addendum forms (Exhibit B), the eight percent calculation would produce approximately 6,337 square feet to be devoted to IZ units.<sup>2</sup> You propose to satisfy the entirety of the IZ square footage requirement in the ten units and not provide any market rate independent living units.

Based on my review of the regulations, there is nothing that prohibits a development from devoting 100% of the residential units generating the IZ requirement to IZ units, provided they meet the development standards of Subtitle C § 1005. Pursuant to Subtitle C § 1005.1, because the IZ set-aside requirement for the building is more than 850 square feet, the first IZ unit must provide two bedrooms. Your draft CIZC form indicates you would comply with this requirement by providing two units with two bedrooms each. You have also advised me that none of the IZ units would be located in the cellar of the building, in conformance with Subtitle C § 1005.7. With respect to the remaining development standards, the project would necessarily meet them because no market-rate units would be provided that could exceed the limits of the proportionality test, location, concentration, or design. For example, the remaining nine units could all be studios or all one-bedroom units because they could not exceed the ratios of non-existent market-rate units. *See* Subtitle C § 1005.1(a) and (b). This rationale also applies to the location, concentration, finishes and design criteria of Subtitle C §§ 1005.2, 1005.3, 1005.5. Additionally, you have advised me that the IZ units would be constructed concurrently with the assisted living units, which are not subject to IZ, thus fulfilling the spirit of Subtitle C § 1005.4 to provide market-rate and IZ units at the same time. Accordingly, I determine that IZ regulations allow all ten independent living units generating the IZ requirement to be set aside as IZ units, notwithstanding the absence of any market-rate independent living units.

## 2. Independent Living Units in R-1-B Portion of Lot (U § 203.1(g)(2)).

In another programming scenario, the proposed CCRC use on the R-1-B portion of the site would be comprised solely of independent living residences and would provide approximately 36 units. Normally, Subtitle U § 203.1(g)(2) would limit a CCRC in the R-1-B District comprised solely of independent living units to no more than eight units. However, the MU-4 portion of the building would include approximately 114 units devoted to assisted living (including memory care) units and independent living units.<sup>3</sup> I conclude that because the project would be a single building for zoning purposes, the proposed CCRC use is not comprised solely of independent living units. Consequently, the limitations of 203.1(g)(2) are not triggered and the R-1-B portion of the building is not limited to eight units.

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<sup>1</sup> The IZ provisions apply to developments in the MU-4 District that “will have ten or more new dwelling units.” *See* Subtitles C § 1001.2 and G § 104.1.

<sup>2</sup> The proposed project will employ Type I construction. Pursuant to Subtitle C § 1003.2(a), the development must set aside the greater of eight percent (8%) of the gross floor area dedicated to residential use excluding penthouse habitable space or fifty percent (50%) of the bonus density utilized.

<sup>3</sup> The number and type of units in the R-1-B and MU-4 portions of the site may vary as the building program is refined. Any alternative programming, including all assisted living units in the R-1-B portion of the site, would be designed to ensure that no additional zoning relief would be required for the CCRC, particularly with respect to parking spaces.

3. Cellar/Basement Calculations.

You have asked for confirmation that the cellar and basement measurements have been properly calculated to conform with the maximum permitted density in the MU-4 District. There is a 17-foot grade differential between the highest elevation of the site at V Street and the lowest elevation along MacArthur Boulevard. As a result, while the ground floor of the building is exposed along MacArthur Boulevard, it eventually is below grade as the building turns the corner from U Street to the boundary with the adjacent parking lot to the east and then transitions northward into the R-1-B District.

Based on the drawings we reviewed on our call and the supplemental elevation drawings you provided me (see Exhibit C attached hereto), and as described herein, I confirm that you have properly calculated the cellar and basement areas of the building affecting gross floor area (“GFA”). The MU-4 portion of the CCRC has a permitted density of 3.0 FAR using inclusionary zoning (“IZ”) bonus density applicable to the independent living units. It is also entitled to an additional 0.4 FAR from the R-1-B portion of the site for a depth of 35 feet along the zone boundary line pursuant to Subtitle A § 207.1. Based on a land area of 35,417.63 square feet in the MU-4 District, and 7024.74 feet in the 35-foot strip, the project may achieve a maximum density of approximately 109,062 square feet of GFA.<sup>4</sup> Using the perimeter wall method under Subtitle B § 304.4, you determined that the MU-4 portion of the building has a cellar perimeter of approximately 138 linear feet, or approximately 13.7 percent of the MU-4 building perimeter. Of the 24,387 square feet on the ground floor, only 20,790 square feet count toward GFA. The upper floors in total have 87,860 square feet of GFA, and together with the ground floor, achieve a total of approximately 108,650 square feet of GFA, which is below the maximum permitted gross floor area of 109,062 square feet. Provided no portion of the MU-4 building extends into the 35-foot boundary zone, the proposed building would comply with the blended FAR limitations for the site.

4. Lot Occupancy

Each wing of the building must comply with the lot occupancy limitations of the zone district in which it is located. The MU-4 portion of the site may cover 75 percent of its land area under the IZ bonus regulations. The footprint of the building in the MU-4 portion of the site covers 24,387 square feet of land area, or approximately 68.9 percent of the 35,414 square feet of MU-4 land area, thus complying with the lot occupancy limitations for the MU-4 District.

The R-1-B portion of the site may achieve a maximum lot occupancy of 40 percent. Here, the above-grade footprint of the R-1-B portion of the building covers approximately 11,518 square feet of land area, or approximately 39.1 percent, and thus is compliant. While the garage level of the R-1-B portion of the building covers a much larger portion of the R-1-B site, approximately 76.7 percent of that level is less than five feet above the adjacent natural or finished grade (whichever is lower), and thus does not count toward lot coverage (see Exhibit C). The garage level that does count toward lot occupancy is covered by the above-grade building and does not increase the lot coverage beyond 39.1 percent.

5. Building Height Measuring Point.

The building height for the proposed single building on Lot 25 may appropriately be measured from V Street, N.W., consistent with the provisions for residential districts,

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<sup>4</sup>  $(35,417.63 \times 3.0) + (7024.74 \times 0.4) = 109062.78$  sf GFA permitted on MU-4 site.

notwithstanding the split-zoned nature of the site. As you know, when a property borders more than one street, all zone districts allow an owner to choose the street from which to measure height. 11-B DCMR §§ 307.3 and 308.7. However, the point from which to measure that height along that street is different for residential and non-residential districts. In non-residential districts such as MU-4, the building height measuring point (“BHMP”) is established at the level of the curb, opposite the middle of the front of the building, to the highest point of the roof or parapet. 11-B DCMR § 307.1. In residential districts such as the subject R-1-B zone, the BHMP is established “at the adjacent natural or finished grade, whichever is the lower in elevation, at the mid-point of the building façade of the principal building that is closest to a street lot line.” 11-B DCMR § 308.2.

Because the V Street elevation chosen as the front of the building is located in the R-1-B District, I determined that the BHMP for the entire proposed building, including the portion located in the MU-4 District, is governed by the residential provisions. As shown on the site plan attached as Exhibit D, the BHMP is at elevation 164.82 feet, which is the adjacent finished grade at the mid-point of the building façade that is closest to the V Street lot line. The exact elevation may change as more precise measurements of the site are developed. It is my understanding that the V Street elevation would be flush with the property line to conform with the range of front setbacks of other buildings along this block of V Street, N.W., as required under 11-D DCMR § 305.1. I confirm for you that the BHMP for the R-1-B portion of the building can appropriately be used for the entire building, notwithstanding the different point of measurement used for the MU-4 District.

#### 6. Rear Yard Measurement

The R-1-B District requires a rear yard depth of 25 feet. *See* Subtitle D § 306.1. As shown in the attached site plan and in the image to the right, Lot 25 is irregularly-shaped with frontage on four streets. As such, the rear yard measurement is governed by Subtitle B § 318.1. That section provides that “[i]n the case of a lot that is triangular or irregularly shaped, the furthestmost point or line from the street lot line shall be deemed the point or line from which the required rear yard shall be measured.” With V Street selected as the street frontage, the furthestmost point or line from the V Street lot line is U Street, N.W. Pursuant to Subtitle B § 318.8 and D § 205.2, the required rear yard depth may be measured to the center line of U Street because the site fronts on three or more streets. U Street is a minimum of 90 feet wide in this location, thereby resulting in a rear yard depth of at least 45 feet.



We discussed whether the portion of the lot along the south boundary line of the R-1-B District (just north of the area labeled CVS parking lot) was considered a rear lot line requiring a 25-foot setback. I confirmed for you that because it was not the furthestmost line of the irregularly-shaped lot, it does not constitute a rear lot line and does not require a rear yard setback. Although this area does not meet the definition of a side yard, either, you indicated the building may be set back approximately 8-10 feet from that property line above grade.<sup>5</sup> I conclude that the footprint of the building in this location does not require any setback.

<sup>5</sup> Pursuant to Subtitle D § 206.2, detached buildings in the R-1-B District must provide two side yards each at least eight feet in width.

7. GAR/Pervious Surface Calculation for Split-Zoned Site

The MU-4 portion of the site is subject to the green area ratio (“GAR”) requirements of Subtitle C § 600 and Subtitle G § 407 at a rate of 0.3 GAR as measured against the entire Lot 25, including that portion zoned R-1-B. Separately, the R-1-B portion of the site is required to provide at least 50% pervious surface as part of the development. You asked for guidance on how to apply these separate requirements to this split-zoned site. Pervious surfaces are one type of development feature that can help meet the more expansive GAR requirements. By meeting the 0.3 GAR requirement of the MU-4 District for the entirety of Lot 25, I conclude the project would also necessarily satisfy the pervious surface requirement for the R-1-B portion of the site. Consequently, this project does not require a separate, duplicative calculation for the pervious surface requirement for the R-1-B portion of the site.

8. Parking

The proposed project must meet the separate parking requirements for each zone district in which the building is located, which is based on the number of residential units. Here, the project proposes approximately 114 units in the MU-4 portion of the building and approximately 36 units in the R-1-B portion of the building. Approximately 5,600 square feet of retail space would also be provided in the MU-4 portion of the site. Up to two carshare spaces may count as three parking space each for the MU-4 portion of the building. Based on these parameters, I confirm that the parking requirements can be calculated as follows:

Use	R-1-B	MU-4
Multi-family units	36 units - 4 = 32 units @ 1 space/2 units = <b>16 spaces req.</b>	114 units - 4 = 110 units @ 1space/3 units = <b>37 spaces req.</b>
Retail	N/A	5,600 sf - 3000 = 2,600 sf @ 1.33 per 1000 sf = <b>3 spaces req.</b>
Subtotal	16	40
Two Carshare	N/A	- 4 = <b>52 required spaces</b>
<b>TOTAL (all uses) =</b>		<b>52 spaces</b>

Your preliminary plans showed six surface spaces to the west side of the R-1-B portion of the building. I confirm that this area of the building would be deemed a side yard and that surface spaces are permitted in that location. Pursuant to Subtitle C § 710.2, parking spaces may be located any open area of the lot except the front yard. In residential districts, ten or more surface spaces must be set back at least six feet from any property line. I understand that those surface space may be relocated to the garage.

9. Walls of Surface Parking Structure Do Not Constitute Retaining Walls

As an alternative plan, you indicated that you may proceed solely with the matter-of-right project in the MU-4 District and forego construction of the CCRC wing in the R-1-B District. Under this approach, the required parking for the MU-4 building would be provided in a partially

below-grade structure to create a surface lot on the R-1-B portion.<sup>6</sup> Because there is no building above the surface lot, and because portions of the parking lot walls would be above grade, you have asked me to confirm that these walls do not constitute individual retaining walls that could potentially require zoning relief if the height exceeds four feet pursuant to Subtitle C § 1401.3.

The surface parking structure would be located in the east half of the R-1-B portion of the site at the northeast corner, where there are two existing retaining walls. The east wall along the property line ranges in height from approximately 5 feet at V Street to 13.5 feet toward the interior of the site. The base of the wall is at an elevation of approximately 164-165 feet (above sea level). (See Exhibit D.) The proposed surface parking structure would be constructed in this northwest corner of the site, with the entrance toward the south center portion of the R-1-B site at an elevation of approximately 153.4 feet (approximately 24.5 feet lower than the highest point of the existing retaining wall). Upon entering the garage, a vehicle would turn left (north) up a ramp to the single deck of the surface parking structure. There will not be any occupiable space underneath the surface lot.

The two west walls of the surface parking lot structure would be both below and above grade, as shown in Section A on attached Exhibit E. They would tie into the ramp and the paved surface of the structure and provide exterior cladding. I confirm for you that that these two exterior walls are part of the parking structure itself and would not be deemed retaining walls.

The Zoning Regulations define a retaining wall as

A vertical, self-supporting structure constructed of concrete, durable wood, masonry or other materials, designed to resist the lateral displacement of soil or other materials. The term shall include concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems, anchored walls, soil nail walls, multi-tiered systems, boulder walls, or other retaining structures.

Subtitle B § 100.2 (“Retaining Wall”).

Here, both of the west walls are integrated into the structural elements of the surface parking lot and serve to enclose it. While the walls may be made of concrete and also resist lateral displacement of soil as an ancillary function, their primary function is as an element of the surface parking lot structure. This ancillary function does not render it a retaining wall. It is analogous to a house foundation that may also resist lateral displacement of soil but whose primary function is to support the house, rather than to act as a free-standing retaining wall. Consequently, the structure’s walls can be greater than four feet in height out of grade because they do not meet the definition of a retaining wall.

Based on the foregoing and the attached plans, your proposed development plan is compliant with the zoning provisions discussed above. Please do not hesitate to contact me with any addition questions.

Sincerely, Matthew Le Grant  
Matthew Le Grant  
Zoning Administrator

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<sup>6</sup> My office previously confirmed for you by email dated November 20, 2017, that the parking requirements generated by the MU-4 portion of the site may be located in the lower-density portion of the split-zoned site pursuant to Subtitle A § 207.1(e).

Attachments:

- Exhibit A – Zoning Maps
- Exhibit B – Draft CIZC Forms
- Exhibit C – Perimeter Wall Drawings
- Exhibit D – Site Plan with BHMP
- Exhibit E – Surface Parking Structure Sections

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.