

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



November 21, 2016

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

Re: Zoning Determinations for Penthouse - Development of Property within Square 453

Dear Ms. Shiker:

This is to confirm the substance of our discussions on July 12, 2016, regarding the proposed development of property in Square 453. Square 453 is bounded by Eye Street to the north, 6th Street to the east, H Street to the south, and 7th Street to the west. You informed me that your client will be developing several lots fronting on the south side of Eye Street, NW, between 6th and 7th Streets, NW, including those lots at 608 through 630 Eye Street, NW (known as Lots 40, 50, 815-819, 821, and 835) and a portion of the alley system to be closed (the "Property").

The Property is zoned DD/C-3-C. It is located within the Downtown Historic District and covered under Section 1707 of the Zoning Regulations. The Property is also located within the Chinatown subarea per Section 1705 of the Zoning Regulations and is located within Housing Priority Area B per Section 1706 of the Zoning Regulations. The maximum permitted height for development on the Property is 110 feet, based on Section 1701.7 and the 1910 Height Act. The Property is limited to a maximum FAR of 6.0 pursuant to Section 1707.4(j); thus, according to Section 1706.20 of the Zoning Regulations, the Property is not required to comply with the residential requirement set forth for properties within Housing Priority Area.

You informed me that your client intends to develop the Property with a residential building with ground floor retail and a community arts center (the "Project"). The Project has received concept approval from the Historic Preservation Review Board. The Project has also been reviewed by the Board of Zoning Adjustment (the "BZA"), which granted variance relief from the closed court requirements pursuant to Section 776 of the Zoning Regulations, granted penthouse setback relief, pursuant to Section 411.11 of the Zoning Regulations, in one location on the east portion of the building (the "East Tower") from the open court wall to the south, and denied penthouse setback relief in two locations on the west portion of the building (the "West Tower") from the open court wall to the east. You confirmed that the BZA's vote on your request for special exception relief was taken at its May 24, 2016 public hearing.

Since receiving the BZA's vote, your client has modified the Project's proposed penthouse design to comply with the setback requirements set forth in Section 411.18 of the Zoning Regulations. At our meeting on July 12, 2016, you asked me to confirm the following zoning determinations for the penthouses on the Project:

1. Penthouse on the West Tower

No penthouse setback is required from the Property's west property line, since the Property abuts Lot 856, which has a building currently built to the property line and which is permitted to have the same matter-of-right height as the Project. Lot 856 was built outside the period of significance for the Downtown Historic District and is therefore not contributing. See Section 411.18(c)(4).

The penthouse on the West Tower is otherwise setback in full compliance with Section 411.18 of the Zoning Regulations such that special exception relief is not needed. As shown on Penthouse Plans attached hereto, this penthouse has two heights:

- i. One height of 9'-9" for penthouse habitable space and stair towers, which are setback at least 9'9" from all edges of the roof; and
- ii. One height of 20' for screening walls around uncovered mechanical equipment and the elevator override, which are setback at least 20' from all edges of the roof.

The two penthouse heights on the West Tower are permitted pursuant to Section 411.9 of the Zoning Regulations, which provides that "[e]nclosing walls of the penthouse shall be of equal, uniform height... except that (a) [e]nclosing walls of *penthouse habitable space* may be of a single different height than walls enclosing penthouse mechanical space... and (c) [r]equired *screening walls around uncovered mechanical equipment* may be of a single, different uniform height." 11 DCMR § 411.9 (emphasis added). Therefore, because the penthouse is permitted to have the two heights, and because the two heights are setback at least 1:1 in all required locations, zoning relief is not needed for the penthouse on the West Tower.

2. Penthouse on the East Tower

As shown on the attached Penthouse Plans, the penthouse on the East Tower has three heights, which is permitted by Section 411.9 of the Zoning Regulations as follows:

- i. One height of 16'-3" is provided for enclosed mechanical equipment and screening walls around uncovered mechanical equipment. This portion of the penthouse is setback at least 16'-3" from all edges of the roof and is permitted to be at this height due to Section 411.9 of the Zoning Regulations, which permits an *initial* penthouse height by the following reference: "enclosing walls of the penthouse shall be of equal, uniform height as measured from the roof level..."

- ii. One height of 9'-9" is provided for penthouse habitable space, a stair tower, and mechanical equipment. This portion of the penthouse is setback at least 9'-9" from all edges of the roof *except* that it is only setback 8' from the open court wall to the south, for which the BZA has granted special exception relief. The 9'-9" portion of the penthouse is permitted to be at this height due to Section 411.9(a) of the Zoning Regulations, which permits a *second* penthouse height by the following reference: "[e]nclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space."
- iii. One height of 10'-8" is provided for the screening walls around uncovered mechanical equipment and some limited mechanical space. This portion of the penthouse is setback at least 10'-8" from all edges of the roof and is permitted to be at this height due to Section 411.9(c) of the Zoning Regulations, which permits a *third* penthouse height by the following reference "[r]equired screening walls around uncovered mechanical equipment may be of a single, different uniform height."

In addition, pursuant to 411.18(c)(5), I have determined that the penthouse does not have to be setback from the closed court located to the northeast of the East Tower. Section 411.18(c)(5) provides that a 1:1 penthouse setback is only required from "walls that border any court other than closed courts."

Therefore, because the penthouse is permitted to have three separate heights, and because each height is setback at least 1:1 in all required locations (except for the stair tower), zoning relief is not needed for the penthouse on the West Tower in any location except for the 8' setback for the stair tower.

3. Green Roof

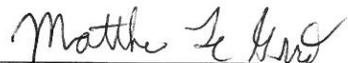
A green roof system is proposed for the roof of the lower penthouses. This green roof system and related elements, including a vertical element to provide a termination for the roofing material and to serve as a screen protector for the green roof system, has a maximum height of 1'-4". It is accepted practice that roofing material and insulation above the roof and penthouse slabs are not counted as part of the height of the roof or penthouse. Thus, the green roof and related materials do not create a separate additional penthouse height on the roof of the building. Moreover, in every location where the parapet wall exists, it is also setback 1'-4" from the building wall, thus meeting the 1:1 setback requirement.

Based on the foregoing analysis, all required zoning relief has been eliminated for the building's penthouses, except for the 9'-9" tall stair tower that is setback 8' from the open court wall to the south.

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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: Penthouse Plans

File: Det Let re 600 Block of Eye St NW to Shiker 11-21-16