



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

April 28, 2020

Jeff C. Utz
Goulston & Storrs
1999 K Street NW, 5th Floor
Washington, DC 20006

**RE: L'Enfant Plaza (Square 387, Lots 186 and 187 and Square 435, Lot 61)
(the "Property") – Confirmation of Zoning Concepts**

Dear Mr. Utz:

The purpose of this letter is to confirm the zoning interpretations of certain sections of the Zoning Regulations as they relate to the development of portions of the above-referenced Property, as discussed in our meeting of March 5, 2019.

It is my understanding that Potomac Creek Associates, LP, or an affiliated party, is designing two (2) new projects on the Property: (1) a 130 foot, approximately 325,400 square foot office structure addition to the existing L'Enfant Plaza complex where denoted as "COB" on [Exhibit A](#) located on Lot 872 in Square 387 ("**Center Office Building**"), and (2) a 130 foot, approximately 140,000 square foot office structure addition to the existing L'Enfant Plaza Complex where denoted as "NEOB" on [Exhibit A](#) located on Lot 837 in Square 435 ("**Northeast Office Building**", collectively with the Center Office Building, the "**Project**").

The L'Enfant Plaza complex ("**Complex**") was developed under an Urban Renewal Plan and, as I have previously determined by a letter dated February 14, 2008 (attached as [Exhibit B](#)) (the "**2008 Letter**"), the entirety of the L'Enfant Plaza Complex is considered one building for zoning purposes with the retail promenade acting as the building connection among the components of the Complex.

The Property is zoned D-5. The Property stretches from D Street, SW to Frontage Road SW and from 10th Street, SW to the western boundary line of the Department of Housing and Urban Development Headquarters.

Applicable Zoning Regulations

The Center Office Building and the Northeast Office Building projects are subject to the 2016 Zoning Regulations. Notably, prior to the effective date of the 2016 Zoning Regulations, the Center Office Building project received conceptual approval from the Commission of Fine Arts ("**CFA**") and a hotel project on the site of the Northeast Office Building received conceptual approval from CFA, which approvals would have vested both projects under the 1958 Zoning Regulations. However, both such approvals have expired and are thus no longer so vested.

Additions to Building

The Center Office Building and the Northeast Office Building will each be considered an addition to the existing building, which is comprised of the entire Complex on the Property and is treated as part of the single building for zoning purposes.

Height

The D-5 Zone District permits a maximum building height of 130 feet at the Property, based on the Act to Regulate the Height of Buildings in the District of Columbia (approved June 1, 1910) (the "**Height Act**"), which provides that the maximum height of a building on the Property may not exceed the lesser of 130 feet or the width of the street on which the building fronts plus twenty (20) feet. 11 DCMR Subtitle I § 540.1.

As described in the 2008 Letter, the measuring point for the height of the Complex building is “a point at the curb elevations of the sidewalk on the Tenth Street Mall where it is intersected by the East-West axis of the so-called ‘Hotel’ building.” The measuring point for height for the Center Office Building and the Northeast Office Building will be taken from the same measuring point for height. The approximate location of such measuring point for height is shown with a red “X” on the attached [Exhibit A](#). Per the 2008 Letter, the Complex may utilize 10th Street’s width of 110 feet to derive a building height of 130 feet for the Complex.

Floor Area Ratio (“FAR”) and Density Credits

The D-5 Zone District permits a maximum commercial FAR of 6.5, with no limitation on residential FAR. 11 DCMR Subtitle I § 539.1. Density credits allow for the construction of more non-residential density than is otherwise permitted on a site. While the 1958 Zoning Regulations required transferable development rights (“TDRs”) for the greater of: (1) each square foot of gross building area proposed over 6.5 FAR for a property, or (2) each square foot of gross building area constructed above 90 feet of height, regardless of whether the building density exceeded a 6.5 FAR, the 2016 Zoning Regulations only require density credits to be obtained for the building area above 6.5 FAR.

Since the entirety of the Complex is to be analyzed as one building for zoning purposes, the total lot square footage of the Complex and the gross square footage of all structures located on the Complex must be considered to determine the developable density on the Property.

In order to calculate the amount of density constructed on the Property and the amount of density credits (and TDRs under the 1958 Zoning Regulations) required for the proposed project, the following calculations should be made:

- Combine the gross floor area of each structure on the Property, which should include the building area of the Complex improvements over 9th Street, SW, even though this portion of the structure is not located over an underlying record lot. This calculation is shown on Table A of [Exhibit C](#). The total existing building area is 2,373,303 square feet. The construction of the Center Office Building and the Northeast Office Building would increase the total building area on the Property to 2,838,703 square feet.
- Combine the total lot area of all parcels comprising the Property, which should include the footprint of the Complex improvements over 9th Street, SW, even though there is no portion of a record lot underlying such property. This calculation is shown on Table B of [Exhibit C](#). The total lot area to incorporate into the calculation of density is 429,198 square feet.

Therefore, the current FAR, prior to the construction of the Project, is 5.53 (2,373,303 SF / 429,198 SF) and the proposed FAR following construction of the Project would be 6.61 FAR (2,838,689 SF / 429,198 SF). Accordingly, the Project would require the use of approximately 48,902 square feet (2,838,689 SF – (429,198 SF X 6.5 FAR)) of density credits (or TDRs) from a density perspective.

You noted that prior projects recently constructed under the 1958 Zoning Regulations, the “Spy Museum” project and the “southeast office building” project, transferred 37,000 square feet¹ of TDRs and 75,000 square feet² of TDRs to the Complex, respectively. As a result of these transfers, the Complex is able to exceed the 6.5 FAR non-residential limitation by 112,000 gross square feet (37,000 SF + 75,000 SF). Thus, the Complex could achieve an additional 524,484 gross square feet $[(429,198 \text{ SF} \times 6.5) + 112,000 \text{ SF}] - 2,373,303 \text{ SF}$ above and beyond the structures currently existing on the Complex, without the purchase of additional density credits (or TDRs). These figures are summarized on [Exhibit D](#).

¹ These TDRs were transferred per Certificate of Re-Transfer of Development Rights (Re-Transfer Number Three) from JBG/TDR Holdings, L.L.C. to Potomac Creek Associates, L.L.C. dated January 4, 2016, and recorded on March 14, 2016, as Instrument No. 2016024770.

² These TDRs were transferred per Certificate of Re-Transfer of Development Rights (Re-Transfer Number One) from MS 1300 First Street, L.L.C. to JBG/LEP Southeast, L.L.C. dated November 17, 2016, and recorded on February 23, 2017, as Instrument No. 2017020347.

As a result, no density credits would be required to develop the Project under the 2016 Zoning Regulations. TDRs previously purchased for the "Spy Museum" and the "southeast office building" projects grant the Property sufficient bonus density to satisfy both the requirements for bonus density for height above 90 feet (under the 1958 Zoning Regulations) and for density above 6.5 FAR (under the 2016 Zoning Regulations).

In addition, since records for the existing building are not complete due in part to the construction of the Complex under the Urban Renewal Plan, the above calculations can be shown in any permit drawings utilizing an architect's certificate summarizing the existing and proposed square footage. Such certificate would constitute sufficient evidence for the calculation of density credits (or TDRs) required for any project on the Complex, in the absence of historical evidence in the form of zoning computation sheets or other official government records.

Rear and side yards

A rear yard is not required for a lot with three (3) or more street frontages, such as the Property. 11 DCMR Subtitle I § 205.2(b). There is no side yard requirement for buildings in the D-5 Zone District and none is proposed. *Id.* § 206.1.

Courts

In a letter dated October 25, 2011 (attached as Exhibit E), I previously determined that the courts at the Property are to be considered based on their situation within the entirety of the L'Enfant Plaza Complex rather than on the basis of individual assessment and taxation lots or individual portions of the L'Enfant Plaza Complex. Where existing, open courts in buildings devoted to non-residential use must have a width of 2.5 inches per foot of height measured from the lowest level of the court to its highest point, and not be less than six (6) feet. We anticipate that the Project will create several irregular courts and will maintain compliance based on prior rulings regarding the subject relating to the Complex.

Parking

Parking is not required in the D-5 Zone at this location³. 11 DCMR Subtitle I § 2 However, the Complex contains parking. To the extent that existing parking or parking facilities are non-compliant with the parking facility dimensional requirements, such conditions would be allowed to continue as legal non-conforming structural elements provided that such conditions are not altered.

Loading

Loading is currently provided at the Property, although the Property is a legal non-conforming structure for loading (under the 1958 Zoning Regulations) currently due to a deficiency of one (1) 55-foot loading berth.

However, additional loading is not required at the Property because the use categories of the loading requirements have been "maxed out." That is, the addition of more office (or retail or hotel) use at the Property would not trigger the need for additional loading as the Property has already triggered the maximum loading requirement under the Regulations.

In addition, additional loading is not required for the Project as the result of Section C-901.6. Such section states that additional loading is not required unless a building addition or expansion exceeds 25% of the GFA existing at the site as of September 6, 2016. The Project does not meet such 25% threshold based on the following calculations:

³ Under the 1958 Zoning Regulations, parking was typically required in varying amounts depending on the use mix of any project in the C-3-C Zone District in which the Property was previously located. However, pursuant to Section 2105.1(a), since the building has a direct connection to a Metrorail station and is located in the Central Employment Area, the project was not required to furnish parking under the 1958 Zoning Regulations.

- Project additional square footage: 325,386 SF + 140,000 SF = 465,386 SF
- Existing structure (on 9/6/16) (Excludes "Spy Museum" and "southeast office building" although such projects were permitted under the 1958 Zoning Regulations to be conservative): 1,968,794 SF
- Percentage = 23.6% (465,386 SF/1,968,794 SF) of existing structure as of 9/6/16
- 23.6% < 25%. No loading triggered

Bicycle parking

The Property is a legal non-conforming structure for bicycle parking (as bicycle parking was not required when the Complex was initially constructed).

Under Section C-802.5, additional bicycle parking is not required unless an expansion to an existing building exceeds 25% or more of the gross floor area existing at the site as of the effective date of the 2016 Zoning Regulations (September 6, 2016), as above. Based on the same calculations set forth above for loading requirements, the Project would constitute an enlargement of approximately 23.6% of the Complex. Therefore, bicycle parking is not required for the Project.

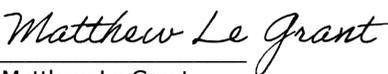
Green Area Ratio ("GAR")

The GAR requirement for the D-5 Zone District is 0.2. However, the Complex was initially constructed prior to the GAR requirements becoming effective.

Since the Complex is one building for zoning purposes, GAR does not apply to the Project based on the below calculations pursuant to Section C-601.3. Assuming that the building permit applications for the Project are submitted in 2020, the 2020 tax year assessments for the Complex would be utilized, generating a figure of \$283.3 MM. The construction of the Project would be well below \$283.3 MM. Since the cost of the construction of the Project does not exceed 100% of the tax assessed value of the Complex structures, GAR does not apply to the Project.

This conclusion is in accordance with prior determinations that, under the 1958 Zoning Regulations, GAR was not required for the "southeast office building" since the value of that project's construction (estimated to be \$47,561,600 per the permit application) did not exceed 100% of the assessed value of the entirety of the building improvements (~\$133.8MM for TY2016).

If you have any questions about this matter, please do not hesitate to contact me.

Sincerely, 
 Matthew Le Grant
 Zoning Administrator

Attachments Exhibits A, B, C, D, E

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.

Exhibit A - GIS Plat Showing Zoning

Exhibit B - D.C. Zoning Administrator Determination Letter

Exhibit C – Summary of Gross Floor Area and Property Lot Area

Table A

<u>Project Component</u>	<u>Building Area (GSF)</u>
Existing East Hotel and Office (“East Building”)	978,465
Existing North Office (“North Building”)	370,637
Existing South Office (“South Building”)	371,575
Existing Southeast Office Building (“Southeast Building”)	280,997
Existing Spy Museum (above plaza)	123,512
Existing Promenade Retail (“Center Building”)	248,117
Total of Existing Building Area	2,373,303
<u>Proposed</u> Center Office Building (above plaza)	325,400
<u>Proposed</u> Northeast Office Building (above plaza)	140,000
Total density existing and proposed	2,838,703

Table B

<u>Property Component</u>	<u>Lot Area (SF)</u>
Square 435, Lot 61; Square 387, Lots 186 & 187	342,169
Area of footprint over 9 th Street SW	87,029 ⁴
Total Area	429,198

⁴ This area figure is derived by calculating the dimensions of the east building footprint over 9th Street, SW, as shown on the diagram by A. Morton Thomas & Associates, Inc.’s File No. 108-262.007 dated September 2015, which was used to establish the current A&T lots.

Exhibit D – Density Credit and TDR Calculations

- **TDRs previously allocated to Complex = 112,000 SF**
 - “Spy Museum” project allocated 37,000 square feet of TDRs to Complex for height above 90’ calculations
 - “Southeast office building” project allocated 75,000 square feet of TDRs to Complex for height above 90’ calculations.
- **Vested Allowable Density = (429,198 SF X 6.5 FAR) + 112,000 SF = 2,901,787 SF (6.76 FAR)**
- **Existing Density/FAR = 2,373,303 SF or 5.53 FAR (2,373,303 SF / 429,198 SF)**
- **Proposed Density/FAR = 2,838,689 SF or 6.61 FAR (2,838,689 SF / 429,198 SF).**
- **Project requires the use of ~48,902 SF (2,838,689 SF – (429,198 SF X 6.5 FAR)) of Density Credits (or TDRs).**
- **48,902 SF of existing 112,000 SF of TDRs may be used for project**
 - No additional density credits required

Exhibit E – October 25, 2011 Determination Regarding Courts