

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



December 7, 2015

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

Re: Zoning Determinations for Development of Property within Square 453

Dear Ms. Shiker:

This is to confirm the substance of our discussions on May 13, 2015, regarding the proposed development of property in Square 453. Square 453 is bounded by Eye Street to the north, 6<sup>th</sup> Street to the east, H Street to the south, and 7<sup>th</sup> 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 6<sup>th</sup> and 7<sup>th</sup> 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. You asked me to confirm the following zoning determinations for the Project:

Rear Yard

No rear yard is required for the Project due to Section 1707.6 of the Zoning Regulations, which provides that the rear and side yard requirements of the underlying zone district do not apply in the Downtown Historic District. The Project incorporates a 15-foot non-required rear yard, which will be dedicated as a public alley easement for access within the alley system.

Courts

Due to the historic structures that are part of the Project, the Project includes a variety of open and closed courts at different levels. You have provided a detailed Court Analysis and Court Plan to me, a copy of which is attached. The Court Analysis indicates that the Project incorporates 14 distinct courts, plus the non-required rear yard. Based on your calculations and plans, I find that all of the courts, except Court 6, which is a closed court on the east side of the proposed building, comply with the minimum width and area requirements of the Zoning Regulations. You must obtain a variance from the Board of Zoning Adjustment (BZA) for Court 6 because it does not comply with the minimum court width and area requirements of Sections 776.3 and 776.4 of the Zoning Regulations.

Parking

You asked me to confirm the calculation for the required parking for the Community Space (defined below). Parking is required for this type of use as follows:

Use	Requirement
Area, armory, assembly hall, auditorium, community center, concert hall, convention hall, dance hall, funeral parlor, ice or roller skating rink, public hall, stadium, or theater:	1 for each 10 seats of occupancy capacity for the first 10,000 seats, plus 1 for each 20 seats above the first 10,000; provided, that where such seats are not fixed, each 7 sf usable for seating shall be considered 1 seat

Since there is no fixed seating, you should identify the area usable for seating. Each 7 square feet usable for seating shall be considered one seat. According to the information that you have provided to me, the Community Space provides 2,333 square feet and includes 400 square feet usable for seating (see attached Community Space Plan). Accordingly, 6 parking spaces are required for this use as follows:  $(400 \text{ sf}) \div (7 \text{ sf}) = 57.14 \div (10 \text{ seats}) = 5.71 \rightarrow$  rounds to 6 required parking spaces.

Loading:

Section 2200.5 of the Zoning Regulations provides that no additional loading berths, loading platforms, or service/delivery loading spaces shall be required for a historic landmark or a building or structure located in a historic district that is certified by the State Historic Preservation Officer as contributing to the character of that historic district. This provision applies to changes of use within an existing historic resource and to expansions or additions to historic landmarks and contributing structures. Based on this provision, no loading will be required for the development which will be constructed as an addition to the historic structure. As a practical matter, loading will be provided for the Project, accessed from the public alley at the rear of the Property.

Preferred Use Requirements in the DD:

As noted above, the Property is located within the Chinatown subarea of the DD District. Section 1705.3 of the Zoning Regulations requires that the proposed building devote at least 0.5 FAR equivalent to retail, service, arts, and arts-related uses listed in §§1710 and 1711 and wholesaling accessory to those uses.

You informed me that the Project proposes the adaptive reuse of two contributing buildings into a ground floor, 2,333 square-foot space to house an Asian Living Arts Center, which will include cultural, educational and community oriented programming (the “Community Space”). Community groups, including those within Chinatown, will have access on a non-exclusive basis to use the space. The owner selected an Asian Living Arts Center as the preferred use following a community wide solicitation process based on the center’s contributions to Asian visual and performing arts and its willingness to incorporate a Chinatown cultural preservation element in the programming of the space. Visitors to the center will also be able to hear oral histories of the Chinese immigrants to America and their struggles to assimilate. A collaboration of the Dana Tai Soon Burgess Dance Company and DC Asian Pacific American Film has agreed to staff and manage programming for the Community Space during the initial ten years following completion of the Project. The developer also agrees to design and build out the interior of the space and pay the utilities and real estate taxes for the space during the initial ten years following completion of the Project; however, the direct costs attributable to the space (e.g. cleaning, security, etc.) will be passed on to the user of the space. The Community Space will be built out with an open performance area, dressing rooms, back of house storage, bathrooms and an area displaying the Chinese American oral histories. When not hosting visual or performance arts events, the Community Space will be able to accommodate exercise classes, educational classes or meetings.

Based on my understanding of the proposed use and design of the Community Space discussed in the preceding paragraph and consistent with past rulings of this office, I conclude that the proposed Community Space is consistent with the following arts and arts-related uses enumerated in §1711: Art Center (§ 1711.1(a)); Arts Organizations, Administrative Offices of (§ 1711.1(h)); and Assembly Hall, Auditorium, Public Hall, or Other Performing Arts Space, including rehearsal/pre-production space or concert hall (§ 1711.1(j)). Therefore, the 2,333 square feet of space devoted to the Community Space can be included in the overall calculation of the building’s satisfaction of Sections 1702.1 and 1705.3 of the Zoning Regulations .

Inclusionary Zoning:

The Project is exempt from Inclusionary Zoning pursuant to Section 2602.3(e)(i) of the Zoning Regulations because it is located within the Downtown Development District.

Roof Structures:

The 1910 Height Act states that penthouses over elevator shafts, chimneys, and tanks may be erected to a greater height, provided that they are "set back from the exterior walls distances equal to their respective heights above the adjacent roof." Section 770.6(b) of the Zoning Regulations provides that housing for mechanical equipment or a stairway or elevator penthouse must be "set back from the exterior walls a distance at least equal to its height above the roof upon which it is located." Exterior wall is not defined either in the 1910 Height Act or in the Zoning Regulations.

You informed me that due to the challenges of redeveloping the Property with the historic resources, the roof structure will not meet the required setbacks in many locations. Accordingly, you asked me to confirm which walls are exterior walls for purposes of the 1910 Height Act and for purposes of the Zoning Regulations.

Based on the plans that you provided to me, attached hereto, the Project includes renovation of the existing historic buildings fronting on Eye Street. The new construction is set back from the historic resources approximately 55 feet. For purposes of the 1910 Height Act (the "Act"), an "exterior wall" has historically, and consistently, been interpreted to mean walls that adjoin/about a street. Because the façades of the historic buildings, which range from two to three stories, are built to the property line along I Street, these façades would be considered exterior walls for which a 1:1 setback is required under the Act. Based on long-standing interpretations of the Act, building walls that do not abut a street are not considered "exterior walls" for purposes of determining compliance with the Act. Thus, since the walls that form the open courts do not abut a street, they are not considered exterior walls for purposes of determining compliance with the Act. This same interpretation would apply to the building walls that front the alley since they also do not abut a street. Therefore, the 1910 Height Act does not require a 1:1 setback (1) from the building walls that rise from the second/third floor to form the open court on I Street, (2) from the building walls that form the open court on the upper stories that open onto the alley, and (3) from the building wall on the west portion of the project that abuts the alley, so long as all of the roof structures are set back a minimum of 1:1 from the building walls that abut, or are built to, the property line along I Street. As noted above, all roof structures are at least 55 feet from the "exterior wall" along I Street.

However, notwithstanding that they are not considered to be exterior walls under the Act, building walls that adjoin a court or alley do constitute exterior walls for purposes of the Zoning Regulations. Accordingly, to the extent that the roof structures are not set back 1:1 from walls that front a court or are abutting an alley, you must seek special exception relief from the BZA as provided by Section 411.11 of the Zoning Regulations. In the Roof Structure Plan attached, the Project includes roof structure(s) that are not setback 1:1 from a court on both the north and south sides, as well as from a wall along the alley on the western portion of the Project. Thus, the owner must request relief from the BZA.

December 7, 2015

Page 5

Finally, this office has determined that there is no setback requirement for a roof structure along closed courts or lot line walls pursuant to the Zoning Regulations or the 1910 Height Act. Accordingly, no zoning relief is required for the roof structure set back from the east and west property line or from Court 6, described above.

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:  
Zoning Map  
Community Space Plan  
Court Analysis and Court Plans  
Roof Structure Plan

File: Det Let re Square 453 to Shiker 12-7-15