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

August 8, 2011

By US Mail and Email PDF

John T. Epting
Goulston & Storrs
1999 K Street, NW, 5th Floor
Washington, DC 20006

Re: **465 – 471 New York Avenue Street, NW (Square 514, Lots 851, 852, and 864) (collectively, the "Property") – Project Zoning Confirmation Letter**

Dear Mr. Epting:

The purpose of this letter is to confirm the zoning and interpretations of certain sections of the Zoning Regulations as they relate to the redevelopment of the above-referenced Property, as discussed in our meeting of June 16, 2011. It is my understanding that the potential purchaser of the Property is designing a thirteen (13) story hotel project with approximately 216 rooms and support space on the Property. In addition, the western portion of Lot 864 will contain a relocated three (3) story townhouse (from 465 New York Avenue, NW) with six (6) residential units. I have concluded that the proposed project complies with the Zoning Regulations as described below.

The Property is split-zoned in the Downtown Development Overlay ("**DD**") / C-2-C Zone District and the DD / R-5-B Zone District[1]. The DD/C-2-C portion of the Property is also located in Housing Priority Area A. The Property's total site area is 12,181.8 square feet. The Property is also in the Mount Vernon Square Historic District (the "**Historic District**").

Height

The DD/C-2-C Zone District permits a maximum building height of 130 feet at the Property, based on the width of New York Avenue, NW. The portion of the project on such portion of the Property is proposed to be approximately 130 feet in height. The DD/R-5-B permits a maximum height of 50 feet. The portion of the project on such portion of the Property, which contains the relocated townhouse from 465 New York Avenue, is approximately 42 feet in height.

[1] The zone line was moved so that Lots 851 and 852 and a 42.18 foot wide portion of Lot 864 were changed from DD/R-5-B to DD/C-2-C in 2007 by Z.C. Order No 07-29.

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FAR

The DD/C-2-C Zone District permits a maximum FAR of 8.0, plus an additional 0.5 FAR through the purchase of TDRs. Further, through the purchase of CLDs, a property can exceed 8.5 FAR. A building of approximately 91,520 square feet (or 10.0 FAR for such portion) is proposed for the portion of the project on the DD/C-2-C portion of the Property. The DD/R-5-B Zone District permits a maximum FAR of 1.8. The portion of the project on such portion of the Property is approximately 4,698 square feet (or 1.55 FAR for such portion).

When a lot is divided by a zone boundary line, § 2514.1 permits the extra density from the lesser restrictive use zone district to be increased by the bulk permitted on the portion of the lot located in the more restrictive use zone district, provided that no portion of any structure permitted on the lesser restricted portion of the lot shall be extended to the more restricted portion of the lot and other standards enumerated in this Section are met. Therefore, the unused density from the R-5-D-zoned portion of the Property may be utilized on the DD/C-2-C portion of the Property. No portion of the proposed structure on the C-2-C-zoned portion of the Property would extend to the R-5-D-zoned portion of the Property. Such portion of the Property (Lot 864) was in single ownership on May 12, 1958. Such portion of Lot 864 is also located within 35 feet of the zone district boundary line. Further, the additional bulk authorized under § 2514 would not exceed the maximum bulk permitted on the C-2-C portion of the site, since the FAR is unlimited with the purchase of CLDs. As a result of § 2514.1, the amount of 761 square feet may be utilized on the C-2-C portion of the Property since such amount is unused square footage from the DD/R-5-B portion of the Property. The 761 square foot figure is calculated as: 5,459 square feet (3,033 square feet of R-5-B lot area x 1.8 FAR) – 4,698 square feet of existing and relocated building area.

As a result of the above, the project's proposed square footage would require 54,151 CLDs. Such figure is calculated as:

- 41,184 CLDs - the required 4.5 FAR residential square footage for the 9,152 square foot DD/C-2-C portion of the Property in Housing Priority Area A;

  plus
- 13,728 CLDs - the difference between 8.5 FAR and 10.0 FAR for the 9,152 square foot DD/C-2-C portion of the Property. This approach has been approved previously by the District, as evidenced by the CLD Covenant attached as Exhibit A.

  minus
- 761 CLDs - the amount of unused square footage on the DD/R-5-B portion of the Property, as calculated above.

  = **54,151 CLDs**

The proposed square footage would also require 4,576 TDRs, calculated as 0.5 FAR for the 9,152 square foot DD/C-2-C portion of the Property.

The first closed court (the "lower west court") is located in the residential portion of the project primarily on the DD/R-5-B portion of the Property and has an adjacent wall of approximately 35.5 feet. Therefore, an 11 foot, 10 inch court width is required (and the project proposes a court width of approximately 27 feet, 6 inches at such location) and a court area of 273.78 square feet is required (and the project proposes a court of approximately 1,500 square feet). The second closed court (the "mid west court") is located in the non-residential portion of the project and has an adjacent wall of approximately 84.5 feet. Therefore, a 21 foot, 1.5 inch court width is required (and the project proposes a court width of approximately 28 feet, 6 inches at such location) and a court area of 893 square feet is required (and the project proposes a court of approximately 1,600 square feet).

The above noted courts comply with the court requirements of the Zoning Regulations.

Parking

Parking is required in varying amounts based on the use mix at the Property. In the C-2-C Zone District, for hotel use, one (1) parking space is required for each two (2) hotel rooms plus one (1) parking space is required for each 150 square feet in the largest hotel exhibit or function space. In the R-5-B Zone District, for apartment use, one (1) parking space is required for each two (2) residential units.

The proposal would include approximately 216 hotel rooms and a hotel function space of approximately 450 square feet. Therefore, the parking requirement for the hotel use is 111 (108 plus three (3)). The proposal would include approximately six (6) residential units on the R-5-B portion of the Property. Therefore, the parking requirement for such apartment use is three (3) parking spaces. The total parking requirement on site is: 114.

Due to the existing building's status as a building contributing to the Mount Vernon Square Historic District, the Property may benefit from § 2120.4. That Section provides that:

> Any parking provided for a historic resource in excess of that which existed at the time the historic resource was listed in the District of Columbia Inventory of Historic Sites or the historic district was created shall be exempt from § 2115, and §§ 2117.5 and 2117.6.

Therefore, since the Property does not currently include parking and the project would construct parking including a below-grade parking garage, the project may utilize § 2120.4. That Section allows parking added to historic resources to avoid adherence to parking size requirements under § 2115 (except that they should be a minimum of eight (8) feet by sixteen (16) feet under § 2120.5) and certain aisle width requirements under §§ 2117.5 and 2117.6. A parking plan for the proposed project is shown on pages A01-A03 of Exhibit C. Note that the turning diagrams have been included on such Exhibit in order to demonstrate that such garage is functional. Such parking garage is also not required to provide parking attendants.

Lot occupancy

The DD/C-2-C Zone District permits a maximum lot occupancy of 100% for a non-residential building and 80% for a residential building. The project will occupy approximately 82% of the portion of the Property zoned DD/C-2-C with a non-residential building. The DD/R-5-B Zone District permits a maximum lot occupancy of 60%. The project will occupy approximately 51% of the portion of the Property zoned DD/R-5-B.

Side and Rear yards

A side yard is not required in the DD/R-5-B and DD/C-2-C Zone Districts and none is provided by the project.

Under § 1707.6, since the Property is in a Historic District now located in the DD Overlay, no rear yard is required for the Property. § 1707.6 states that the rear yard requirement shall not apply in the Downtown Historic District or Pennsylvania Avenue Historic Site. At the time the DD Regulations were created in 1991, the Mount Vernon Square Historic District was not in existence. The Mount Vernon Square Historic District was created in 2005. The only reason that the Mount Vernon Square Historic District is not listed in § 1707.6 is that such Historic District was not in existence at the time these sections were created in 1991. Therefore, § 1707.6 should be applied to the Property and no rear yard is required, regardless of the structures existing thereon currently. This is in accordance with my prior ruling on 443–455 I Street, NW (attached as Exhibit B), which is also located in the Mount Vernon Square Historic District. The project does not provide a rear yard on any portion of the Property which is zoned DD/C-2-C.

Courts

If courts are provided, they must have certain minimum dimensions depending on their height and the use of the building. When provided, an open court in a non-residential building requires a width of three (3) inches for every foot of height of the adjacent wall, but no less than twelve (12) feet; a closed court in a non-residential building requires an area of at least twice the square of the width of court that would be required based upon the height of the court, but no less than 250 square feet; an open court in a residential building requires a width of four (4) inches for every foot of height of the adjacent wall, but no less than fifteen (15) feet; and a closed court in a residential building requires an area of at least twice the square of the width of the court that would be required based upon the height of the court, but not less than 350 square feet. Under § 776.5(a), when a building is devoted to both residential and nonresidential uses, and those uses are located on different floors of the building, the width and area requirements shall be computed for each use at the plane of each floor of the building.

Here, one (1) open court and two (2) closed courts are proposed to be provided on the Property, as shown on pages A05-A08 and A11 on Exhibit C. The open court (the "east court") is located in the non-residential portion of the project on the DD/C-2-C portion of the Property and has an adjacent wall of approximately 104.5 feet. Therefore, a 26 foot, 1.5 inch court is required and the project proposes a court of approximately 26 feet, 1.5 inches at such location.

Since the parking garage will contain approximately 114 parking spaces and since the Property benefits from § 2120.4, the proposed parking for the project will satisfy the parking requirements of Chapter 21 of the Zoning Regulations.

Loading

Due to the existing building's status as a building contributing to the Mount Vernon Square Historic District, loading would not be required for the project at the Property. However, a loading space of 20 feet and a loading berth of 30 feet are provided at the Property. Therefore, the project will satisfy the loading requirements of Chapter 22 of the Zoning Regulations.

Roof Structures

The project proposes a new penthouse of twelve (12) feet, in compliance with the maximum penthouse height permitted under the Zoning Regulations. Further, such penthouse will be set back from the exterior walls of the building a distance greater than the height of such penthouse. Page A08 of Exhibit C depicts the roof plan for the proposed project. Further, in addition to mechanical equipment and an elevator override, the project will include a pool and associated recreational facilities on the roof top, as permitted under the Zoning Regulations. Therefore, the proposed roof structure will be compliant with the Zoning Regulations.

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

Sincerely,

Matthew Le Grant

Matthew Le Grant
Zoning Administrator

Date: 8/8/2011

Attachments

File: Det Let re 465-471 New York Ave NW to Epting 8-8-2011

Exhibit A