

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



October 28, 2013

David Avitabile  
Goulston & Storrs, PC  
1999 K Street NW, 5<sup>th</sup> Floor  
Washington, DC 20006

Re: 1401 New York Avenue NW (Square 222, Lot 24) ("Property")

Dear Mr. Avitabile:

This letter confirms the substance of our discussions on August 28, 2013 regarding the above-referenced Property.

The Property is located along 14<sup>th</sup> Street NW between New York Avenue NW and H Street NW and fronts on all three streets. The Property is located in the C-4 Zone District. The Property is improved with a 12-story commercial office building with ground-floor retail uses ("Building"). The Building was constructed in the early 1980s. You indicated that you were unable to locate a zoning computation sheet for the construction of the Building, although the project architects were able to locate and reviewed the construction drawings approved as a part of the building permit for the Building (the "Approved Plans").

You have indicated that your client proposes to renovate the existing building as shown on the plans attached as Exhibit C, and your client wishes to confirm that the proposed renovations conform to the Zoning Regulations. My evaluation follows below.

**I. Arcade Enclosure**

Based on the architects' survey of the Approved Plans, the Building was constructed to the maximum permitted FAR of 10.0. The Building also includes a significant ground-floor arcade that runs the entire length of the Building along 14<sup>th</sup> Street. At the time of construction, the Regulations authorized a FAR bonus for ground-floor arcades such that the Building, with the arcade, exceeds the maximum permitted FAR of 10.0

You have proposed enclosure and elimination of the existing arcade in order to bring ground-floor uses out to the sidewalk, as shown on the plans attached as Exhibit C. Section 2524 of the Zoning Regulations permits the enclosure and elimination of such arcades without such enclosure being charged as additional gross floor area. Section 2524 states that the exception is limited to enclosures for "retail, service and arts uses." You have indicated that the proposed enclosure of the arcade will primarily contain such retail, service or arts uses, but will also

include enclosure of the lobby entrance to the upper-story office component of the Building, which would be similarly extended out to line up with the streetwall at the property line.

As I have previously concluded, Section 2524 permits the enclosure of arcades to extend out lobby entrances as well as retail and service spaces without increasing the underlying gross floor area. See January 28, 2013 Letter Re: 1111 19<sup>th</sup> Street NW, attached as Exhibit A. As we discussed, the lobby area should be less than 20% of the overall enclosed arcade such that the area enclosed for lobby area is accessory to the enclosure of retail and service space. Alternatively, you can place a retail, service, or art use within the lobby to convert it to a retail, service or arts use as well. Therefore, I conclude that the proposed ground-floor arcade enclosure is permitted under the Zoning Regulations subject to the limitations above.

## **II. Mezzanine Level Ceiling**

The project architects have indicated that the approved plans depict a portion of the mezzanine space used for mechanical space with a headroom of less than 6'6" in height that was not charged against the Building's gross floor area. This area of the Building continues to be used as mechanical space, but apparently the drop ceiling intended to fix the ceiling height at 6'6" in height was never constructed. The Building is occupied pursuant to a valid certificate of occupancy. I conclude that pursuant to the valid certificate of occupancy the condition is grandfathered and no further action is required to install the drop ceiling after the fact, so long as the area continues to be used only for mechanical equipment.

## **III. Third Story Enclosure**

As shown on the plans attached as Exhibit C, the façade of the third story is recessed behind the façade of the rest of the building, effectively creating a balcony or terrace condition. The project architects have determined that the gross floor area associated with this portion of the building was not counted toward the overall maximum gross floor area of the building at the time of construction.

As a part of the renovations illustrated on Exhibit C, you propose constructing a new façade along the corner of the building that would enclose a portion of this recessed third story area. As we discussed, the enclosure of this area would create additional gross floor area under the Zoning Regulations, but the Property does not have any remaining gross floor area. As I have previously concluded, you may enclose this area only if you remove floor area elsewhere in the building from the gross floor area calculation by converting area to mechanical space with a reduced fixed ceiling height less than six feet, six inches. See Exhibit A. Accordingly, I conclude that you may enclose the third story recessed area only if the gross floor area is reduced by a corresponding decrease elsewhere within the Building.

## **IV. Roof Structure**

You have proposed expanding the roof structure further west to accommodate a stair tower and other equipment. As shown on Exhibit C, the proposed addition would match the height and design of the existing roof structure, but it would not be set back 1:1 from the western

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building wall. The western building wall is located along the property line adjacent to property also located in the C-4 Zone District and improved with a structure that is also constructed to a height of 130 feet; accordingly, pursuant to the Board of Zoning Adjustment's ruling in Appeal No. 17109 attached as Exhibit B, the wall is an interior wall and no setback is required.

Accordingly, I conclude that relief from the setback requirement is not required to accommodate the roof structure addition.

You have also proposed to create a rooftop gathering area for building tenants. The area is located on a roof deck that is approximately 1-2 feet above the height of the main roof. Such deck is less than 4 feet in height and is therefore not subject to the roof structure requirements of Section 411 of the Zoning Regulations. The plans attached as Exhibit C also show a glass guardrail along the edge of the rooftop area. The glass guardrail is approximately 42" high, and located on a roof deck that itself is 1-2 feet above the main roof. You have indicated that the railing is required for safety reasons. As we discussed, such railings are not considered to be roof structures, and they are generally permitted on rooftops regardless of height or proximity to the exterior wall when required for life/safety purposes. Accordingly, I conclude the glass railing as shown on the plans is permitted.

As shown on Exhibit C, the plans also call for the renovation of existing circulation space within the roof structure to serve as the elevator lobby, provide access from the elevators to the rooftop areas, and provide storage space for rooftop furniture. Again, the size of the penthouse is an existing condition approved pursuant to a valid certificate of occupancy and I conclude that the reuse of the existing spaces within the penthouse for these uses is permitted.

Finally, the plans included as Exhibit C include a screen wall intended to separate and screen mechanical equipment on the adjacent property to the west. A permanent vertical screen wall does not, by itself, constitute a "roof structure" under the Zoning Regulations but is rather an architectural embellishment that is permitted above the height of the roof. As we discussed, any permanent structure with a horizontal element would, however, become a roof structure that would need to comply with the requirements of Section 411 of the Regulations. As we discussed, a temporary structure or temporary horizontal element (such as umbrellas or a retractable canopy) is permitted so long as it is used for no more than 182 days a year.

Sincerely, Matthew Le Grant

Matthew Le Grant

Attachments: A- Det Letter; B- BZA #17019; C- Plans

File: Det Let re 1401 NY Ave NW to Avitabile 10-28-13