

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



May 3, 2012

Christy Moseley Shiker  
Steven E. Sher  
Director of Zoning and Land Use Services  
Holland & Knight LLP  
Suite 100  
2099 Pennsylvania Avenue, NW  
Washington, DC 20006

Re: Addition to Existing Building 2251 Wisconsin Avenue, N.W. (Lot 1032, Square 1299)

Dear Ms. Shiker and Mr. Sher:

This letter is to confirm the substance of our discussions on January 24 and March 5, 2012, regarding the proposed addition to the existing commercial building located at 2251 Wisconsin Avenue, N.W., (Lot 1032, Square 1299). The Property is zoned C-2-A for all but the rear thirty feet of the Property abutting the Naval Observatory, which is zoned R-1-B. The Property is also located within the Naval Observatory Precinct Overlay District ("NO"). The property contains approximately 40,777 square feet of land area.

You advised me that your client is the contract purchaser of the Property and is considering a residential addition to the rear of the existing building. As such, your client seeks to obtain clarification regarding the application of the Zoning Regulations with respect to certain aspects of the development. In our meeting, we discussed the following items.

- Pre-May 12, 1958 Status of the Existing Building. You asked that I confirm whether the existing building could take advantage of the provisions set forth in Chapters 21 and 22 of the Zoning Regulations relating to conversion and expansion of existing buildings erected on or before May 12, 1958. The District's records indicate that the existing building was constructed in 1958. You informed me that you have been unable to locate the original building permit application for the building in the District's records. You provided to me a copy of the Application for Certificate of Occupancy, dated July 16, 1958. In addition you provided to me a copy of the Certificate of Occupancy, dated August 5, 1958, issued for the two-story office building. For the building to have been completed by those dates and for the certificate of occupancy to have been issued, the building must have been under construction prior to May 12, 1958. In the absence of any information to the contrary, it is my opinion that the construction of the existing building was vested on or before May 12, 1958.

Pursuant to §2100.3, parking is only required for a building built after May 12, 1958. Pursuant to §2100.10, if parking spaces were provided even though they were not required at the time, the number of parking spaces cannot be reduced if the number now required exceeds the number existing on the property. This Office has previously determined that, in that context, "parking spaces" means complying parking spaces under the Regulations. Based on the diagram that you provided to me, the number of zoning complying parking spaces provided is 44 spaces. Thus, parking for the existing building may not be reduced below 44 spaces.

Because this building was vested prior to May 12, 1958, parking spaces for the addition will be required only if the addition increases the gross floor area of the existing building by more than 25%. 11 DCMR § 2100.7. Because the residential addition will increase the gross floor area of the existing building by more than 25%, the total parking required for the redevelopment of the Property will be the parking required for the residential component (i.e., one space for each two dwelling units) plus the 44 parking spaces for the existing building. 11 DCMR §§ 2100.6, 2100.10.

- Measurement of Height. The NO Overlay specifies the point of measurement for buildings in the NO Overlay. Under §1534.2(a), the height must be measured from "the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet." Under §1534.2(b), the curb elevation opposite the middle of the front of the building (i.e., the actual point of measurement) is defined to be "the average elevation of the lot from its front line to its rear lot line." The "average elevation" would be the arithmetic average between the elevation of the site at the midpoint of the front and rear property lines. In this case, assuming that the midpoint at the front is elevation  $\pm 98$  and the midpoint at the rear is elevation  $\pm 70$ , the average elevation would be  $\pm 84$  feet. The actual dimensions and grades would be taken from a survey, to obtain the precise and correct elevations and dimensions. Gladys Hicks, the then-Deputy Zoning Administrator, affirmed this interpretation by counter-signing a letter dated August 11, 1998, a copy of which is attached ("Hicks Letter"). I concur with this interpretation.
- Inclusionary Zoning. Pursuant to §2602.3(e)(v) of the Zoning Regulations, the Inclusionary Zoning requirements for residential development do not apply to the Property.
- Lot Occupancy. The proposed development will retain the existing commercial building located on the front portion of the property and include an addition to be used as an apartment house at the rear. Pursuant to §772.1, in a C-2-A District, the maximum lot occupancy of 60% applies to "a building or portion of a building devoted to a residential use." In this case, only a portion of the building is devoted to an apartment house.

In many cases, the residential use is differentiated from the nonresidential use by a vertical distribution; i.e., the commercial use is located on a lower floor and the residential use is above. In that case, the lot occupancy is calculated at the lowest plane at which there are actual residential units. In the subject case, the uses are distributed horizontally; i.e., a portion of the building is commercial on all floors and another portion of the building is residential on all floors.

In the subject case, as shown on the attached plan, you have calculated that the portion of the building to be devoted to residential use occupies no more than 60% of the portion of the lot related to the residential portion of the building. This is consistent with the interpretation of the Regulations since 1958, when residential uses were disfavored in commercial zones, limited to less than the maximum FAR permitted for commercial uses. It is also consistent with the above-cited language of the Regulations (what is now §772.1), which has not changed since 1958, even though the permitted occupancy was revised in 1979 when the Zoning Commission refocused the commercial zones to encourage residential as part of mixed use.

There are examples of buildings for which the percentage of lot occupancy appears to have been calculated in that manner, although the zoning comp sheets on record are not definitive in that regard. I note also the language of §634.2, for CR Districts, providing that the lot occupancy "may be calculated on a horizontal plane at the lowest level where residential uses begin." [emphasis added] This provision, which was intended to clarify that the CR regulations were to be applied in the same manner as the C regulations, makes it optional as to whether the occupancy can be calculated on the basis of a vertical or horizontal distribution of uses.

For all those reasons, I concur that the building as shown complies with the limitations of §772.1.

- Driveway Ramp. You informed me that a driveway ramp will be located within the R-1-B portion of the Property. You further informed me that the driveway ramp will begin at grade and extend below grade to provide access to parking spaces for the development. Such parking spaces will be located entirely within the C-2-A portion of the Property. Based on the Hicks Letter, attached, the Office of the Zoning Administrator determined in 1998 that such a driveway ramp leading to parking spaces located in their entirety on the C-2-A portion of the property could cross the R-1-B portion of the Property. I concur with this interpretation.

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: Application for Certificate of Occupancy  
Certificate of Occupancy  
Zoning Confirmation Letter dated August 11, 1998

File: Det Let re 2251 Wisconsin Avenue, N.W. to Shiker 5-3-12