

# EXHIBIT E



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR

February 26, 2019

Lyle M. Blanchard, Esq.  
Greenstein DeLorme & Luchs, P.C.  
1620 L Street NW, Suite 900  
Washington, DC 20036

Re: 1803 Rhode Island Avenue, NE - Square 4209, Lot 5 (the "Property")

Dear Mr. Blanchard,

This letter is in reference to the meetings your colleague, Kate Olson and your client had with me on August 29, 2018 and September 13, 2018 regarding your client's finalization of the plans for a commercial development at the Property (the "Project").

The Property has a total land area of 3,346 sf. and is located at the corner of Rhode Island Avenue and Hamlin Street, NE on a triangle shaped lot. The Property is improved with a one-story restaurant ("**Existing Building**"). The Existing Building is attached to the adjacent property to the east. The Property is located in the MU-4 Zone District and all land adjacent to the Property is similarly zoned MU-4. The property located across from Hamlin Street is zoned R-1-B. A copy of the Zoning Map is attached as *Exhibit A*.

The Project proposes to raze the Existing Building to construct a two-story commercial building with a cellar level and habitable penthouse space. The Project will be built to the property lines and the building will therefore occupy 100% of the lot.

The following summarizes our discussion based on the attached conceptual plans. See *Exhibit B*.

**I. Uses**

Use permissions for the MU zones are as specified in the zoning regulations in 11 DCMR Subtitle U, Chapter 5 with the MU-4 zone included in "MU-Use Group E". The uses within the Project are still under consideration but could include a restaurant, coffee shop, grocery store, and rooftop bar.

**a. Restaurant**

A restaurant, defined below, is considered an "Eating and Drinking Establishment" pursuant to the use categories in Subtitle B §200.2(j) (also defined below) and is permitted as a matter-of-right in the MU-4 zone pursuant to Subtitle U §512.1(d).

**Restaurant:** A place of business that does not meet the definition of a “fast food establishment” or “prepared food shop,” where food, drinks or refreshments are prepared on the premises and sold to customers primarily for consumption on the premises. This term shall include, but not be limited to, an establishment known as a café, lunch counter, cafeteria, or other similar business, but shall not include a fast food restaurant. In a restaurant, any facilities for carry out shall be clearly subordinate to the principal use of providing prepared foods for consumption on the premises. A restaurant may include ancillary carry out sales, provided that there is no designated carry out counter or window, no drive through facility, and the carry out service is not an advertised element of the business.

**(j) Eating and Drinking Establishments:**

- (1) The sale of food, alcoholic drinks, or refreshments prepared on the premises and sold to customers for consumption on or off the premises;
- (2) Examples include, but are not limited to: prepared food shop, *restaurant*, fast food restaurant, or fast food drive-through; within these defined terms, uses may also include, but are not limited to, *bar*, *café*, cafeteria, *cocktail lounge*, *coffee shop*, delicatessen, an ice cream parlor or *nightclub*; and
- (3) Exceptions: This use category does not include uses which more typically would fall within the sexually-oriented business establishment use category;

(emphasis added)

**b. Coffee Shop**

A coffee shop is considered a “Prepared Food Shop” pursuant to the definition in Subtitle B §100.2 and is listed within the “Eating and Drinking Establishment” use category in Subtitle B §200.2(j), as defined above.

**Prepared Food Shop:** A food and beverage business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes, but is not limited to, an establishment known as a sandwich shop, *coffee shop*, or an ice cream parlor.

(emphasis added)

A prepared food shop in a MU-4 zone shall be limited to eighteen (18) seats for patrons pursuant to Subtitle U §512.1(d)(3). These eighteen (18) seats include the seating for patrons within the Property’s boundaries. The additional seating for this coffee shop, proposed in public space, shall not be included in this count. If the seating for patrons exceeds 18 seats, you will need to seek special exception zoning relief pursuant to Subtitle U §512.1(d)(3). The Project may have more than one prepared food shop but each one shall be limited to 18 seats.

**c. Grocery Store**

A grocery store is listed as an example of a “retail” pursuant to the use categories in Subtitle B §200.2(j) and is defined in Subtitle B §100.2 as follows:

**Grocery Store:** A use whose primary business is the sale of fresh produce and food products. At least fifty percent (50%) of customer-accessible sales and display area is used for the sale of a general line of food products intended for home preparation and consumption, and at least thirty percent (30%) of retail space is for perishable goods that include dairy, fresh produce, fresh meats, poultry, fish, and frozen foods. Groceries represent the majority of the sales in a grocery store although there may be accessory uses such as prepared food and drink, pharmaceuticals, and bank services.

Retail uses are allowed as a matter-of-right in the MU-4 zone pursuant to Subtitle U §512.1(a).

**d. Rooftop Bar**

Pursuant to Subtitle C §1500.3(c), a nightclub, bar, cocktail lounge, or restaurant use shall only be permitted as a special exception if approved by the Board of Zoning Adjustment (“BZA”). As a result, your client will need to request zoning relief for this use.

**II. Building Height**

Pursuant to Subtitle G §403.1, the maximum permitted building height in the MU-4 zone is 50 ft. with no restriction as to the number of stories. The building height measuring point (“BHMP”) shall be established at the level of the curb, opposite the middle of the front of the building, and the building height shall be the vertical distance measured from the BHMP to the highest point of the roof or parapet or a point designated by a specific zone district. Subtitle B §307.1.

As shown on the Proposed Elevations of Exhibit B, the Project height to the top of the parapet is 50 ft. Therefore, the proposed Project complies with the height requirement in the MU-4 zone.

**III. Penthouses**

**a. Penthouse Height**

Under Subtitle G § 403.3, the maximum permitted penthouse height in the MU-4 Zone District is 12 ft., except 15 ft. for penthouse mechanical space. This zone permits habitable penthouse uses in one story and a second story for mechanical space. The penthouse height is measured from the top of the roof to the top of the penthouse parapet.

As shown on the Building Section of Exhibit B, the Project proposes one story of habitable penthouse space that is approximately 10 ft. in height. As such the total height of the penthouse will not exceed 12 ft., which meets the requirements in the MU-4 zone.

**b. Penthouse Setback**

Subtitle C § 1502.1 (a) and (b) require a setback at 1:1 ratio from the front and rear building wall of the roof upon which it is located. As shown on the Roof Plan of Exhibit B the proposed habitable penthouse will be set back approximately 10 ft. from the front wall and 10 ft. from the rear wall of the Project. No side penthouse setback is required from the adjacent property at 1809 Rhode Island Avenue (Lot 6) because that lot is also zoned MU-4 and will have a face on lot-line wall. Accordingly, the proposed penthouse setbacks satisfy the penthouse setback requirements of Subtitle C § 1502.1 (a), (b) and (c).

The plans show the proposed roof deck extending all the way to the front parapet. Since the parapet is tall enough (approx. 4 ft. tall) to act as (i.e. replace) a guardrail, no guard rails are proposed along the front of the building. The proposed height of the roof deck is 6 in. above the height of the roof which requires the deck to be set back 6 in. from the roof edge (a required 1:1 ratio pursuant to Subtitle C Section 1502.1(a)). Since the parapet wall is proposed to be 6 in. thick this will provide the necessary set back of the roof deck from the edge of the roof. Therefore the roof deck can still extend to the inside face of the parapet wall and complies with the zoning regulations.

**c. Penthouse Enclosures**

Pursuant to Subtitle C §1500.6, all penthouses and mechanical equipment shall be placed in one enclosure, except that a rooftop egress stairwell enclosure not containing any other form of habitable or mechanical space may be contained within a separate enclosure.

As shown on the Proposed Exterior Views on Exhibit B, the roof covering the penthouse habitable space, egress stairwell, and mechanical space will constitute one enclosure, a singular penthouse, in compliance with Subtitle C Section 1500.6.

**d. Penthouse Area**

Pursuant to Subtitle C §1503.1(c), penthouse habitable space with a floor area ratio (“FAR”) up to 0.4 does not contribute to the FAR permitted for the building. The Project's proposed penthouse habitable square footage is 558 sf, which is less than a FAR of 0.4 (1,338.4 gfa). Accordingly, the Project's proposed penthouse habitable space satisfies the penthouse area requirement. In addition, since the penthouse habitable space will not exceed 1,000 sq. ft., the Project will not trigger the affordable housing requirements of Subtitle C §1505.2.

The roof covering the penthouse habitable space, egress stairwell, and mechanical space which will result in a singular penthouse will create an open ended corridor. We discussed that this open ended corridor is not counted toward penthouse habitable space because it is specifically used only for access to the mechanical penthouse and emergency egress stairs.

#### IV. Density

##### a. **Floor Area Ratio (FAR)**

Under Subtitle G §402.1, the maximum permitted non-residential FAR for a new building located in the MU-4 zone is 1.5 FAR. Since the Property contains 3,346 sf of land and you propose a commercial building, you are allowed a maximum of 5,019 gfa.

We discussed whether Subtitle G §402.2 would allow the Project an additional 0.5 FAR as a result of the lot being less than 10,000 sf and the non-residential uses being located in the ground story and the story directly above the ground story, which I agree with. The Office of Planning stated in an email dated November 20, 2018 (attached as Exhibit C) that the above referenced section applies only to existing buildings, not new construction. As a result this Project is not eligible for an increase of 0.5 FAR and the maximum permitted non-residential FAR is 1.5.

Since the Project proposes a 2.49 FAR, your client will need to request an area variance pursuant to Subtitle G §101.5 and must comply with the variance review standards of Subtitle X §1002.1(a) and §1002.2.

##### b. **Cellar**

The zoning regulations define cellar in Subtitle B §100.2 as follows:

**Cellar:** That portion of a story partly below grade where the finished floor of the ground floor is less than five feet (5 ft.) above the adjacent natural or finished grade, whichever is the lower elevation.

As shown on the Proposed Elevations of Exhibit B, the below-grade level satisfies the definition of a cellar because the finished floor of the ground floor is more than 5 ft. above the existing grade. As a result, the cellar area is not included in the FAR calculation pursuant to Subtitle B §304.8.

#### V. Lot Occupancy

Under Subtitle G §404.1, the maximum lot occupancy for a building located in the MU-4 only pertains to residential buildings. The Project proposes all commercial uses and it therefore is allowed a 100% lot occupancy. This lot occupancy complies with the requirement for the MU-4 zone.

#### VI. Rear Yard

A minimum rear yard of 15ft. is required in the MU-4 zone and, since this Property does not abut an alley, the rear yard shall be measured from the rear lot line to the rear wall of the building pursuant to Subtitle G §405.5(b).

In this case, the building occupies 100% of the lot and does not provide any rear yard. Therefore the Project does not comply with the rear yard requirements for the MU-4 zone and you will need to seek zoning relief from the BZA. The BZA may grant relief to the rear yard requirements of Subtitle G as a special exception pursuant to Subtitle X provided that your client meets the criteria listed in Subtitle G §1201.1(a) through (e).

## **VII. Side Yard**

Pursuant to Subtitle G §406.1, no side yard is required for a building or structure other than a detached single dwelling unit or semi-detached single dwelling unit; however, if a side yard is provided it shall be at least two inches (2 in.) wide for each one foot (1 ft.) of height of building but no less than five feet (5 ft.). The Project provides no side yards and is in compliance with the MU-4 zone requirements.

## **VIII. Courts**

No courts are required in the MU-4 zone district pursuant to Subtitle G §202.1, and none are provided for this project.

## **IX. Green Area Ratio (“GAR”)**

The GAR requirement in the MU-4 zone is 0.3 pursuant to Subtitle G §707.1. The Project will satisfy the GAR, through provision of a green roof.

## **X. Vehicle Parking**

For purposes of calculating off-street parking requirements the gfa, in all zones, shall include penthouse habitable space, except that the recreation space for residents or tenant of the building or other ancillary space associated with a rooftop deck shall not be included as per Subtitle C §709.1(b). As discussed previously, the open-ended corridor created by the penthouse roof will not be counted in GFA (for purposes of parking calculation) since it will be only used to access the mechanical area and emergency egress stairs.

In the MU-4 zone, gfa shall include cellar floor area devoted to uses within specific groups, including eating and drinking establishments, office, and retail. Subtitle C §709.1(d). We also discussed the provision regarding the exemption of initial floor area for parking calculations. Subtitle C §701.6. As I previously determined in my letter dated December 22, 2016 in reference to the proposed redevelopment of the Whitman-Walker property at 1701-1711 14<sup>th</sup> Street, NW (see Exhibit D), this provision applies to multiple types of establishments with a single use category, so that each Eating and Drinking Establishment does not get a separate deduction. Rather, each type of use (Eating and Drinking Establishment and Retail) gets the full deduction set forth in the table of parking requirements.

### Number of Required Spaces

Parking requirements are determined by use category.

Eating and Drinking Establishment (Restaurant, Coffee Shop) = 1.33 per 1,000 sf. in excess of 3,000 sf.

Retail (Grocery Store) = 1.33 per 1,000 sf. in excess of 3,000 sf.

Since the uses within the Project are still under consideration but could include a mix of the following, restaurant, coffee shop, grocery store, and rooftop bar, the calculation of the parking is shown below based on the Option which would require the greatest number of vehicular spaces (Option A).

	<b>Option A Uses</b>	<b>Option B Uses</b>
Cellar	<i>Coffee Shop</i>	<i>Grocery</i>
1 <sup>st</sup> Floor	<i>Coffee Shop/Restaurant</i>	<i>Coffee Shop/Grocery</i>
1 <sup>st</sup> Floor Mezzanine	<i>Coffee Shop/Restaurant</i>	<i>Coffee Shop/Grocery</i>
2 <sup>nd</sup> Floor	Restaurant	Restaurant
2 <sup>nd</sup> Floor Mezzanine	Restaurant	Restaurant
Penthouse Habitable Space	Bar	Bar

### OPTION A

<b>Use Category</b>	<b>Area (based on the updated 1/10/19 Plans)</b>	<b>Required Parking</b>
<b>Eating and Drinking Establishment</b> (1.33 per 1,000 sf in excess of 3,000 sf) <ul style="list-style-type: none"> <li>• Coffee Shop</li> <li>• Restaurant</li> </ul>	GFA for Coffee Shop & Restaurant ( <i>includes the penthouse habitable space devoted to restaurant</i> ) = <b>12,976</b>	13.25
<b>REQUIREMENT</b>		<b>Under Option A, 13 Parking Spaces are Required</b>

### OPTION B

<b>Use Category</b>	<b>Area (based on the updated 1/10/19 Plans)</b>	<b>Required Parking</b>
<b>Eating and Drinking Establishment</b> (1.33 per 1,000 sf in excess of 3,000 sf) <ul style="list-style-type: none"> <li>• Coffee Shop</li> <li>• Restaurant</li> </ul>	GFA for Coffee Shop & Restaurant ( <i>includes the penthouse habitable space devoted to restaurant</i> ) = <b>6,887</b>	2.92 spaces required for Eating and drinking
<b>Retail</b> (1.33 per 1,000 sf in excess of 3,000 sf) <ul style="list-style-type: none"> <li>• Grocery Store</li> </ul>	GFA for Grocery Store = <b>6,089</b>	2.32 spaces required for grocery store

<b>REQUIREMENT</b>		<b>Under Option B, <u>5</u> Parking Spaces are Required</b>

Therefore, for the purpose of the parking requirements, I conclude the Project is required to provide at least 13 off-street vehicle parking spaces. If you are unable to provide these spaces at the Property, you will be required to request zoning relief.

**a. Location of Parking**

Pursuant to Subtitle C §701.8, required parking spaces shall be located on the same lot as the use or structure they are meant to serve or on another lot subject to specific provisions. This Project will be in compliance with parking if it meets the requirements to provide the required parking spaces off-site pursuant to Subtitle C §701.8(b)(1).

**XI. Bicycle Parking**

Pursuant to Subtitle C §802.1, non-residential uses with 4,000 sf. or more of gross floor area shall provide long-term and short-term bicycle parking spaces depending on the type use.

**a. Long-Term Bicycle Parking Spaces**

Eating and Drinking Establishment (Restaurant, Coffee Shop) = 1 for each 10,000 sf.

Retail (Grocery Store) = 1 for each 10,000 sf. (N/A retail is less than 10,000)

The Project provides the necessary long-term bicycle parking spaces in a dedicated bike room on the cellar level in compliance with the requirements in Subtitle C §805. Therefore, the Project will provide the necessary long-term bike spaces on site, and thus complies with the bicycle parking requirement.

**b. Short-Term Bicycle Parking Spaces**

Eating and Drinking Establishment (Restaurant, Coffee Shop) = 1 for each 3,500 sf.

Retail (Grocery Store) = 1 for each 3,500 sf. (N/A since the retail is less than 3,500)

The Project proposes to provide the required short-term bicycle parking spaces on adjacent public space within 20 ft. of the lot and, pursuant to Subtitle C §804.1, will seek approval of a public space application.

**XII. Loading**

Food and Alcohol Services (Restaurant, Coffee Shop) 5,000 to 20,000 sq. ft. = 1 loading berth

Retail (Grocery Store) 5,000 to 20,000 sq. ft. = 1 loading berth

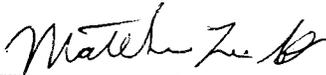
The type and size of the uses requires two (2) loading berths. Since the Project will not be providing any loading, your client will need to seek an area variance from the loading requirements listed in Subtitle C §901.

### **XIII. Conclusion**

Based on the review of the attached plans and exhibits, the Project at the Property must seek the following zoning relief:

- a. **Special Exceptions:**
  - Prepared Food Shop (Subtitle U §512.1(d)(3))
  - Penthouse Rooftop Bar (Subtitle C §1500.3)
  - Rear Yard (Subtitle G §1201)
  
- b. **Area Variances:**
  - FAR (Subtitle G §101.5)
  - Loading (Subtitle C §901)

Sincerely,



Matthew Le Grant  
Zoning Administrator

Attachments: A- Zoning Map  
B- Conceptual Plans dated 1-10-19  
C- OP Email dated 11-20-18  
D- Letter re 1701-1711 14<sup>th</sup> Street, NW dated 12-22-16

File: Det Let re 1803 Rhode Island Ave NE to Blanchard 2-26-19