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December 12, 2011

VIA HAND DELIVERY

Meredith Moldenhauer, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, D.C. 20001

Re: EQR-EYE Street, LLC – BZA Application No. 18289 for 443 – 459 I Street, NW – Square 516, Lots 812 – 815 and 876 (the “Property”) – Supplemental Statement Regarding Closed Court and Historic Lot Variances

Dear Chairperson Moldenhauer and Members of the Board:

On behalf of EQR-EYE Street, LLC (the “Applicant”), the applicant under BZA Case No. 18289, this memorandum is intended to address the variance relief required from 11 DCMR § 776.4 relating to closed court area requirements, and 11 DCMR § 1707.4 relating to FAR limitation of historic lots.

In the OP Report, OP stated that:

- OP cannot yet recommend the Board approve the closed court area relief due to the need for more information regarding the exceptional condition and the practical difficulty standards. (OP did state that the third prong of the variance test is met for all variance requests.)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18289

EXHIBIT NO. 32

- OP has not made a recommendation for the relief requested from § 1707.4's limitation of historic properties' FAR to 6.0 FAR since Square 516 is not mentioned in § 1707.4 and therefore the Property does not require relief from this Section.

Regarding the closed court variance request, we believe that the standards for the approval of a variance from § 776.4, including the exceptional condition creating a practical difficulty standard of the variance test, are satisfied in this instance as described more fully below. Further, we believe that the variance from § 1707.4 is necessary and that the development team has satisfied the standards for variance relief, as described more fully below. Based on further contact with the Office of Planning, the Office of Planning is now supportive of the closed court relief requested.

I. Closed Court Variance Relief

Specifically regarding the closed court variance request, the Office of Planning's Report finds that the Property possesses exceptional conditions that will create practical difficulties for lot occupancy. That same rationale should apply for the closed court relief. The exceptional condition at the Property leading to the closed court variance request results from the historic structures to be maintained on the premises, their location on the lot, and the small size of the remaining unimproved portion of the Property. The three "contributing" historic structures dictate the physical constraints within which any project on the Property must be designed and operated.

Such unique conditions lead to a series of practical difficulties that would result if the Applicant is required to satisfy the strict application of the closed court requirements. Such practical difficulties are as follows:

- **Implications on the proposed structure on Lots 814 and 815** – The portion of the building to be constructed on Lots 814 and 815 requires both an elevator core and a code-compliant corridor depth. Those lots are only a total of 45 feet wide. As a result, further area cannot be taken out of the portion of building to be constructed on Lots 814 and 815 to ensure that the closed court has a compliant area. If additional area is taken out of the portion of the building to be constructed on Lots 814 and 815, the resulting floor plates would create unnecessarily small and likely unusable unit sizes. Further, the building core – which is primarily furnished on Lot 815 – cannot be made smaller. It is already designed to be as small – and the floors as efficient – as possible in the plans submitted to the BZA. Pages BZA 4A and BZA 4B of Exhibit A demonstrate the effect on the structure on Lots 814 and 815 created by two methods of achieving compliant closed courts. The blue and green lines on Pages BZA 4A and BZA 4B of Exhibit A show closed court additions that are located entirely on Lots 814 and 815 and partially on Lots 812 and 813 or partially on Lots 814 and 815, respectively. As shown on the Exhibit, a compliant first floor closed court would either sever the building located on Lots 814 and 815 or severely constrain any usable space on such floor. Similarly, a compliant second through fourth floor closed court would either sever the building on Lots 814 and 815 or dramatically reduce the size of residential units on such floors.

- **Implications on the proposed structure on Lots 812 and 813 –**

Similarly, the portion of the building to be constructed on Lots 812 and 813 to the north of (and “behind”) the closed court, is required to have a certain depth. The Applicant has pushed the court as far north as possible before while still maintaining a functioning residential building. This depth allows for a double loaded corridor. If the space required to create a compliant closed court were to be provided in this area, a much thinner building would result that would likely be a single loaded corridor (or just a corridor). There are very few options for connecting the east and west portions of the building. Pages BZA 4A and BZA 4B of Exhibit A also demonstrate the effect on the structure on Lots 812 and 813 created by two methods of achieving compliant closed courts. The red and green lines on Pages BZA 4A and BZA 4B of Exhibit A show closed court additions that are located entirely on Lots 812 and 813 or partially on Lots 812 and 813 and partially on Lots 814 and 815, respectively. As shown on the Exhibit, either compliant first floor closed court option would sever the connection between the east and west portions of the building, and, would render the building’s parking ramp unusable. (A north-south diagram showing such parking ramp’s minimum clear headroom condition is shown on Page BZA 4C of Exhibit A.) Similarly, a compliant second through fourth floor closed court would either sever the building on Lots 814 and 815 and Lot 876 or dramatically reduce the size of some residential units on such floors.

- If a compliant court were to be required and provided on Lots 812 and 813, the Applicant would be required to provide two “towers” – one on Lots 814 and 815 and one on Lot 876 – which would essentially create two separate structures within the same building. This two structure approach would also require two elevator cores and other building support areas as well. Clearly, either configuration would be highly undesirable and inefficient, and would create construction and maintenance difficulties.
- **Constrains on the south and east of proposed courts** – The courts cannot be expanded south or east since the historic structures are located in those areas. Demolishing all or any portion of the rear of the existing structures on Lots 812 and 813 is not possible based on Historic Preservation Review Board (“HPRB”) requirements. HPRB wanted the entirety of the buildings on Lots 812 and 813 retained. The existing structures must be maintained up to approximately 38 feet of depth and 38 feet of height. Similarly, HPRB wanted the entirety of the building located on Lot 876 retained.
- **View of historic townhouse rears** – The proposed closed courts offer a view of the rear of the historic townhouses that would otherwise be lost by inclusion into the addition. Such configuration of the courts was recommended through the historic review process at that location. Therefore, the Applicant cannot eliminate the court because it is unable to build up to the rear of such rowhouses.

- **Providing light and air** - The proposed building was designed to maximize the amount of viable residential space in the project, while allowing for air and daylight for the residents. The Applicant has introduced the closed court areas to bring more light and air to the center of the building. The resulting plan provides the maximum livable space and most efficient service functions and corridors for the building, along with the maximum light and air for the units. Theoretically, the closed court could be covered over with an atrium thereby eliminating the court variance, but taking away natural light and air and increasing the lot occupancy variance (although, as noted, such design approach was not favored in the historic review process).

II. Historic Lot Variance Relief

Prior to the advent of self-certification, property owners filed plans with the Zoning Administrator (“ZA”) prior to filing an application for relief to the BZA. The ZA reviewed the associated plans and issued a letter detailing the needed BZA relief. Such property owners then filed that ZA letter and associated plans with the BZA as part of their applications. In the instant case, the Applicant sought a determination from the ZA regarding the 6.0 FAR limitation for historic lots under § 1707.4, among other elements of zoning (including the exemption from the rear yard requirement under § 1707.6 due to the location in the Mount Vernon Square Historic District). Based upon consistent, long-standing interpretations, the ZA issued a determination letter, dated April 18, 2011 (attached as Exhibit B), that no rear yard is required for the project, but portions of the Property are subject to the 6.0 FAR limitation for historic lots (absent BZA relief). In such letter, the Zoning Administrator determined that Lot 876 (and Lots 812 and 813)

should be treated the same as other lots that were not yet historic when the Downtown Development District was created. Therefore, the Applicant self-certified the 6.0 FAR relief and the other BZA relief and filed its application. Such self-certification of the need for relief was shown on the first page of the self-certification form included in the application packet and such relief is further described in the application's statement and shown on the plans. Based upon the ZA determination, the Applicant requires the BZA to consider such relief.

As stated in our application materials, we believe that the variance standards for the historic lot variance relief are satisfied.

The exceptional condition for this area of relief is related to the existence of the historic buildings described above. The HPRB and Historic Preservation Office ("HPO") require the entirety of the structures on Lots 812, 813, and 876 to be maintained. Further, the HPRB approval requires a setback from the rears of the historic townhouses on Lots 812 and 813. The requested historic FAR variance only relates to Lot 876. Due to the historic structures, the Applicant is required to maintain the entire existing structure on Lot 876. This structure comprises the entirety of Lot 876 (unlike the historic structures on Lots 812 and 813). (See BZA Plans Pages 1D and 2 and Page 19 of the application statement.)

Such exceptional condition creates a practical difficulty if strict compliance to § 1707.4 is required. As a result of the existence of the historic structures, additional density had to be pushed back from the townhouses. Since the unimproved portions of

the Property comprise only 46%¹ of the Property, some additional density had to be pushed to the rear of Lot 876. Further, this site is limited to 110 feet rather than 130 feet, which further complicates where density can be shifted on the site. With a 130 foot height, additional density could be shifted from Lot 876 to the unimproved portion of the Property (Lots 814 and 815). However, with a 110 foot scheme, more of the building area is required to be placed on Lot 876.

As detailed in our application materials, no harm to the public or to the Zone Plan will occur as a result of the approval of the variance from § 1707.4. The proposed development is consistent in scale and bulk with the zoning and Comprehensive Plan designation for the surrounding buildings and properties. The project furthers the goals and policies of the Zoning Regulations and Comprehensive Plan that focus on design in the DD Overlay. The Project is the type of well-designed residential building that was envisioned for this portion of the DD Overlay (and Central Employment Area) and that the Zoning Regulations intend to foster. The project both renovates and incorporates existing historic fabric in the DD Overlay. The project has been reviewed and recommended for approval through the historic review process.

In addition, the FAR on the historic lot is a technical request under the Regulations. Since Lot 876 will be combined into the remainder of the Property by subdivision, the project's FAR complies with the Zoning Regulations as permitted under Chapter 17.

¹ This percentage is based on approximately 9,497 sq. ft. of unimproved lot area (the area not occupied by the three "contributing" structures) divided by the total lot area of 20,615 sq. ft.

III. Conclusion

For the above reasons, we believe we have satisfied the variance test for the closed court relief requested and that the relief from § 1707.4 is required and that the variance test for such relief has also been satisfied.

We look forward to presenting this case to the Board tomorrow. If you have any questions, please do not hesitate to contact John at (202) 721-1108 or Jeff at (202) 721-1132. Thank you for your attention to this application.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John T. Epting".

John T. Epting

A handwritten signature in black ink, appearing to read "Jeff C. Utz".

Jeff C. Utz

Enclosures

Certificate of Service

I certify that on December 12, 2011, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below.



Jeff C. Utz

Stephen Cochran (2 copies)
Office of Planning
1100 4th Street, SW, Suite 650E
Washington, DC 20024

ANC 6C (6 copies)
234 E St., NE
Washington, DC 20002

Keith Silver – ANC 6C01
901 New Jersey Ave., NW
Washington, DC 20001

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Exhibit A

Exhibit B

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



April 18, 2011

By US Mail and Email PDF

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

**Re: 443 – 459 I Street, NW (Square 516, Lots 812 – 815 and 876) (collectively, the
“Property”) – Applicability of the Downtown Development Regulations**

Dear Mr. Epting:

The purpose of this letter is to confirm the applicability and implications of the Downtown Development (“DD”) Overlay District regulations, and in particular, § 1706.4(b) of the Zoning Regulations, relating to the potential renovation of the Property. It is my understanding that the potential purchaser of the Property is investigating the possibility of constructing a residential and retail project on the Property. As discussed in further detail below, I have concluded that: (i) the potential renovation of the Property will not trigger the housing requirements of § 1706.4 of the DD Regulations for the portions of the project on Lots 812, 813, and 876, (ii) the Combined Lot Development rights (“CLDs”) generated by the portions of the project on Lots 812, 813, and 876 may be transferred to any Housing Priority Area under § 1708.1(d), and (iii) a rear yard is not required at the Property for the proposed development under § 1707.6.

Property Description

The Property is located in the DD Overlay/C-2-C Zone District. It is also located in Housing Priority Area A. The DD Overlay went into effect in 1991. The Property is also in the Mount Vernon Triangle Historic District (the “Historic District”) which was established in 2005. Three of the four buildings on the Property are contributing buildings in the Mount Vernon Triangle Historic District. The Property consists of 20,614 square feet of land area.

Residential Requirement

Under § 1706.4(b), the Property would be required to “provide on-site or account for off-site in a combined lot development no less than 4.5 FAR of residential use”. However, the DD regulations include a provision that exempts the Property from having to satisfy such housing requirement. §§ 1706.20 and 1707.2-1707.4 provide that the residential requirements do not

apply to any lot that is restricted in its development because of its location in the Downtown Historic District, the Pennsylvania Avenue Historic District, or because it is designated a historic landmark.

The purpose of § 1706.20 is to recognize that historic landmarks and properties located in the two original historic districts in the DD Overlay are prohibited from the additional development opportunities that the DD regulations provide. Thus, such historic buildings and properties are not required to provide residential use.

The Mount Vernon Triangle Historic District was established in 2005, with three of the buildings on the Property noted in the description of the historic district and deemed contributing to the Historic District. The only reason why the Mount Vernon Triangle Historic District is not listed in § 1707.2 or the Property is not listed in § 1707.4, is that the Mount Vernon Triangle Historic District was not in existence at the time these sections were created in 1991. § 1707.5 notes that a project in the historic districts is not eligible to construct bonus density on-site but may transfer bonus density to other sites both if the building is a landmark or it is "a building within the Downtown Historic District or the Pennsylvania Avenue Historic Site that has been preserved in whole or in part pursuant to the Historic Landmark and Historic District Protection Act of 1978 (the "Act")." Therefore, such exemption applies to landmarks and contributing buildings within a historic district in the DD Overlay preserved under the Act alike. I agree that the intent of the DD Regulations is that historic properties in the DD Overlay should not be subject to the housing requirements of § 1706.4. Therefore, the portions of the Property containing the structures to be preserved under the Act (which are subject to the same historic constraints as the properties listed in §§ 1707.2 and 1707.4) should not be subject to the housing requirements of § 1706.4(b).

The three historically significant portions of the Property described in the Historic District application are Lots 812 (453 I Street), 813 (455 I Street), and 876 (443-451 I Street). These parcels comprise 14,199 square feet of lot area. Therefore, such portion of the Property does not have a residential requirement, although such area is limited to 6.0 FAR.

This approach has recently been confirmed by the District several times. For example, the letter from the Zoning Administrator, dated September 25, 1998 (attached as Exhibit A) concludes that a historic landmark located outside of the area described in § 1707.4 is entitled to an exemption from the residential requirements of the DD Overlay pursuant to § 1706.20. In addition, a second letter from the Zoning Administrator, dated May 13, 2008, relating to 457 Massachusetts Avenue, NW, is attached as Exhibit B. Such letter concludes that historic properties in the DD Overlay (such as the Property) do not require residential use under § 1706.4, even though such properties were not specifically enumerated in § 1707.4. Similarly, the Office of Planning notes in its Large Tract Review report for the Yale Laundry project, dated June 5, 2000 (attached as Exhibit C), that the portion of the Yale project that was part of the historic landmark is not subject to the residential requirement. The vacant portion of such site was subject to such residential requirement.

Combined Lot Development Rights

Since Lots 812 (453 I Street), 813 (455 I Street), and 876 (443-451 I Street) have no residential requirement, all residential use constructed on such properties may be transferred as CLDs up to a limit of 6.0 FAR. Further, under § 1708.1(d), CLDs created by a historic property under § 1707.4 can be transferred to any Housing Priority Area. § 1708.1(d) states that:

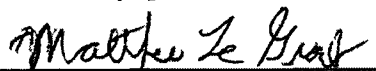
Notwithstanding the requirements of paragraph (c) of this subsection and of § 1706.9, a historic property that is identified and governed by § 1707.4 is eligible to serve as the location of required residential uses within a combined lot development, even if the historic properties are located outside the Housing Priority Area established in § 1706.2.

This approach has also been confirmed by the District several times. For example, such approach is described in the Combined Lot Development Covenant between National Public Radio, Inc., and GIBG YL Partners, LLC, dated February 20, 2008 and recorded as Instrument Number 2008023539 (the "Covenant"). Pages 3 and 32 of such Covenant indicate that the CLD-generating Yale Steam Laundry Condos East project, as a historic property in the DD Overlay, even though not listed in § 1707.2 since it was in the Mount Vernon Triangle Historic District, did not have a residential requirement. Other CLD Covenants utilizing the same conclusion have been recorded for the same CLD-generating property. Further, two CLD Covenants were fully-reviewed and executed by the District but never recorded for the Yale Steam Laundry Condos West project that bifurcated the property into a residual portion of the Yale Steam Laundry historic landmark and the vacant remainder of the site. Those CLD Covenants concluded that no residential requirement existed for the portion of the historic landmark on such property.

Rear Yard Requirement

Similar to the above, 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. That Section states that the rear yard requirements shall not apply in the Downtown Historic District or Pennsylvania Avenue Historic Site. As mentioned above, at the time of the creation of the DD Regulations, the Mount Vernon Triangle Historic District was not in existence. The Mount Vernon Triangle Historic District was created in 2005. Therefore, § 1707.6 should be applied to the Property and no rear yard should be required, regardless of the structures existing thereon currently.

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

Sincerely, 
Matthew Le Grant, Zoning Administrator

Attachments – A, B, C

cc: Stephen Cochran, Office of Planning

File: Determination Ltr re 443-459 I St NW on DD Regs to Epting 4-18-2011

Exhibit A to Exhibit B

September 25, 1998

MEMORANDUM

TO: Armando Lourenco and Gladys Hicks, Department of Consumer and
Regulatory Affairs

Cc: David Colby, Office of Planning
David Maloney, Historic Preservation Division

FROM: Nathan W. Gross, Arnold & Porter
David W. Briggs and Robin Hayes, Holland & Knight

RE: Historic Preservation Regulations, Downtown Development District (DDD)

Request. We request your determination that a historic landmark covered by the provisions of Section 1707 of the Zoning Regulations, but located outside the area described in Section 1707.4 is also entitled to the exemption under the provisions of Section 1706.20 (related to residential uses) if the landmark is located in a Housing Priority Area.

Issue. The Historic Preservation provisions in §1707 of the Downtown Development District (DDD), and related residential provisions in §1706, contain some ambiguities or inconsistencies with regard to historic landmarks. In particular, several subsections in the DDD refer only to a contiguous area described by squares and lots in §1707.4, which properties constitute a listing of both individual landmarks, contributing historic buildings within the Downtown Historic District and the Pennsylvania Avenue Historic Site and associated land. There are a number of historic landmarks within the DDD boundaries which are not listed in §1707.4 and which could be subject to different rules if some provisions of the DDD text are read too literally.

Subsection 1707.2 and other provisions make references to historic landmarks generically, and the government agencies have generally interpreted the historic preservation rules to apply to both "listed" landmarks and "unlisted" landmarks.

This memorandum seeks confirmation that the normal waiver of the residential requirement for historic buildings applies to historic landmarks not located in the area described in §1707.4 on an equal footing with contributing buildings and landmarks that are located in the area described. With new development and renovations moving rapidly

northward and eastward in the Downtown (East End), where many of these landmarks are located and where the Housing Priority Area of the DDD is mapped, it will be important for the rules to be clear.

Adopted Zoning Rules for Historic Buildings. In summary, the DDD provides the following zoning restrictions and incentives regarding historic properties:

- Properties located within the area described in §1707.4 are restricted to a maximum on-site density of 6.0 FAR;
- Transferable development rights (TDRs) are provided for unbuilt density of up to 4.0 FAR on the lot accommodating the historic building (§1707.5(d)); and
- Historic buildings in a Housing Priority Area are not subject to a housing requirement if located within the area described in §1707.4 (§1706.20).

We are raising an issue only with the third regulation above, the required residential component in the Housing Priority Area.

Applicable Properties. Subsection 1707.4 describes by lots and squares an area of the DDD containing both contributing historic buildings and historic landmarks. All of these properties are clearly subject to the restrictions and incentives of the DDD affecting historic properties. These properties are either located within the Downtown Historic District or the Pennsylvania Avenue Historic Site. These properties and historic districts were the focus of testimony and analysis in Zoning Commission Case No. 89-25 (Downtown Development District), because the D.C. Preservation League had petitioned to include the entirety of the Downtown Historic District within the purview of special zoning controls. The applicable parts of the Pennsylvania Avenue Historic Site were added to the list in §1707.4 in the interest of uniform treatment. It was also the clear intent of the Zoning Commission, the Office of Planning and the Historic Preservation Division to treat other historic landmarks in DDD in a consistent manner, but the rules as written contain some ambiguities, discussed below.

Legislative Intent. It is clear from numerous provisions in §1707 that the Zoning Commission and participating government agencies intended all historic buildings to be governed consistently by the historic preservation rules in DDD, as indicated below (with emphasis added):

1707.2 The provisions of this section apply to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue Historic Site.

It is clear from this wording that all landmarks, including those within and outside the historic districts, were intended to be governed by §1707. This is the first substantive provision in §1707, following immediately after the purposes stated in §1707.1, which suggests that this statement should govern the following rules in a general over-arching way.

The immediately following subsection relates to uses within historic buildings and, again, clearly expresses the broad intent of governing historic buildings both within and outside of the two historic districts:

1707.3 Uses within buildings in the historic districts and landmark sites within the DD District are governed by the underlying zones and the special use requirements . .

Additional indications of the legislative intent to treat historic landmarks and contributing buildings equally in the DDD zoning provisions are found in the formal purposes as set forth in §1707.1:

Paragraph (a) makes broad reference to preserving the unique character and fabric of historic buildings, the Downtown Historic District, and the Pennsylvania Avenue Historic Site.

The above is a clear statement of three included categories, including historic buildings generally, and those within the Downtown Historic District and the Pennsylvania Avenue Historic Districts.

Paragraph (b) refers both to historic landmarks and contributing buildings: (b) Encourage restoration and adaptive reuse of historic landmarks and adaptive reuse of contributing buildings in historic districts, together with compatible alterations and compatible new construction.

Paragraph (c) states the intent of restricting permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a compatible scale of new construction in historic districts, especially in projects combining new development with preservation.

Other relevant text in Paragraphs (d) through (f) refers to "historic buildings" broadly, clearly indicating the legislative intent to include all historic buildings in the DDD.

Finally, the provisions for transferable development rights in §1707.5 in several places carefully include historic landmarks outside of the §1707.4 area as being eligible for TDRs. One example is as follows:

1707.5 (b) The property [that is eligible to transfer TDRs] shall be one of those properties identified in 1707.4 and accordingly restricted in on-site density to 6.0 FAR or shall be an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions.

Waiver of the Residential Requirement for Historic Landmarks. Despite the Commission's clear intent to treat all historic properties by the same rules, a discrepancy exists regarding the waiver from a required residential component as provided in §1706.20. Given the legislative intent of the DDD zone to provide incentives and

protections for historic buildings generally, and specific regulations accomplishing that intent, a uniform treatment regarding the residential waiver would be logical and consistent.

Historic buildings within the §1707.4 area are exempted from any residential use requirements for policy reasons. Specifically, given the density restrictions and the (typically) limited profitability of residential uses, the Zoning Commission and the executive agencies decided to allow all-commercial use, as well as transferable development rights, to help defray the relatively high cost of restoring historic buildings. Another important reason for the waiver is that many historic buildings may not lend themselves reasonably to conversion for residential use because of the character or design of the building.

The provision that creates a potential problem is §1706.20 within §1706 Residential and Mixed Use" provisions, as follows:

1706.20 The residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR pursuant to 1707.4.

A narrow reading of this rule would mean that any individual landmark located within the Housing Priority Area and not within the area described in §1707.4 would have a residential requirement of 4.5 FAR in DD/C-2-C districts, 3.5 FAR in DD/C-3-C districts and 2.0 FAR in DD/C-4 districts. The 4.5 FAR, in particular, exceeds the existing density of the majority of applicable landmarks and clearly appears to be contrary to sound historic preservation practices — in terms of mandatory density, mandatory and potentially inappropriate use of the historic building, and reduced financial viability to support high-quality historic restoration of the landmark building.

Affected Historic Landmarks. A moderate, but significant, number of historic landmarks are potentially affected by this interpretation question. The historic landmarks outside of the area defined in §1707.4 but within the Housing Priority Area of DDD include the following:

DD/C-3-C

American Federation of Labor
Asbury United Methodist Church

DD/C-2-C

Fletcher Chapel (Church of God and Saints of Christ)
Moran Building (restored prior to the adoption of the DDD)
Myrene Apartments
Old Engine Company # 6

Additional Historic Landmarks

It is our understanding four additional sites in the northern part of DDD will be nominated for historic landmark status, as a result of the research into a potential Mt. Vernon Square Historic District. This work was authorized by the agreements related to approval of the site for the new Convention Center north of Mt. Vernon Square. These four buildings, if formally designated as historic landmarks, would also be subject to the rules discussed in this memorandum. This is because "historic landmark" is a defined term in the Zoning Regulations, so that the DDD zoning rules that refer to "historic landmarks" would apply.

Conclusion. We understand that the executive agencies of the District of Columbia government have been interpreting and continue to interpret the DDD historic preservation rules in a generally consistent fashion as regards properties identified in §1707.4 and individual historic landmarks outside of that geographic area. Because our firms represent the owners of several historic landmarks that are within a Housing Priority Area but are not within the area described in §1707.4, we seek your confirmation that such landmarks are also included in the intent of §1706.20 and are eligible for the housing waiver.

CONCUR:

Zoning Administrator

By: Amanda Loney
11/4/98

Exhibit B to Exhibit B

LOWER CLOSED COURT

FLOOR 1

MINIMUM AREA = 2,680 SF

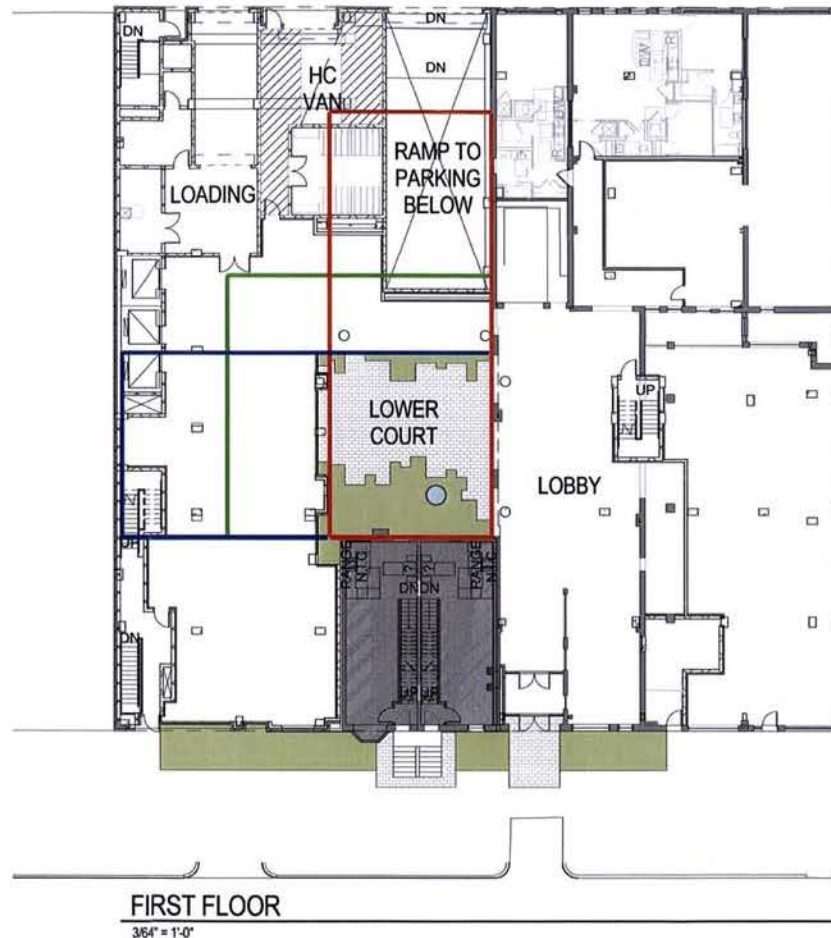
COURT DIMENSION AS DESIGNED:
32'-0" W x 36'-2 1/4" L (1,158 SF)

REQUIRED COURT DIMENSIONS TO MEET MINIMUM AREA:

IF COURT IS EXPANDED NORTH:
32'-0" W x 83'-9" L (red line)

IF COURT IS EXPANDED WEST:
36'-2 1/4" W x 74'-0 3/4" L (blue line)

IF COURT IS EXPANDED EQUALLY NORTH AND WEST:
51'-9 1/4" W x 51'-9 1/4" L (green line)



BZA - 4A
455 EYE STREET

Client
Equity Residential

Project Address
455 I (Eye) Street, NW
Washington DC 20001

Scale
3/64" = 1'-0"

Date
12/10/11

COURTYARD RELIEF



UPPER CLOSED COURT
FLOORS 2-4
MINIMUM AREA = 2,584 SF

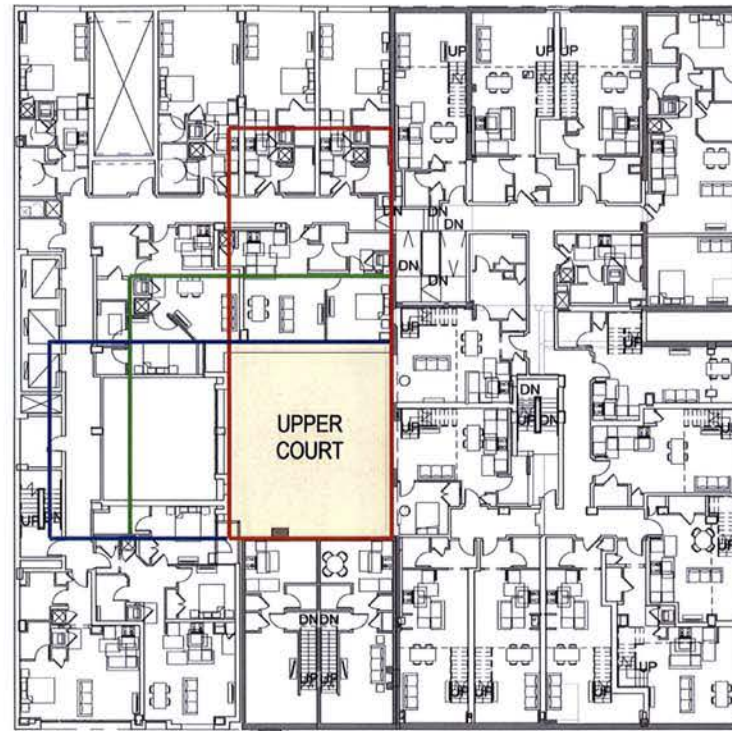
COURT DIMENSION AS DESIGNED:
32'-0" W x 38'-3" L (1,224 SF)

REQUIRED COURT DIMENSIONS TO MEET MINIMUM AREA:

IF COURT IS EXPANDED NORTH:
32'-0" W x 80'-9" L (red line)

IF COURT IS EXPANDED WEST:
38'-3" W x 67'-6 3/4" L (blue line)

IF COURT IS EXPANDED EQUALLY NORTH AND WEST:
50'-10" W x 50'-10" L (green line)



2ND FLOOR

3/64" = 1'-0"

BZA - 4B
455 EYE STREET

Client
Equity Residential

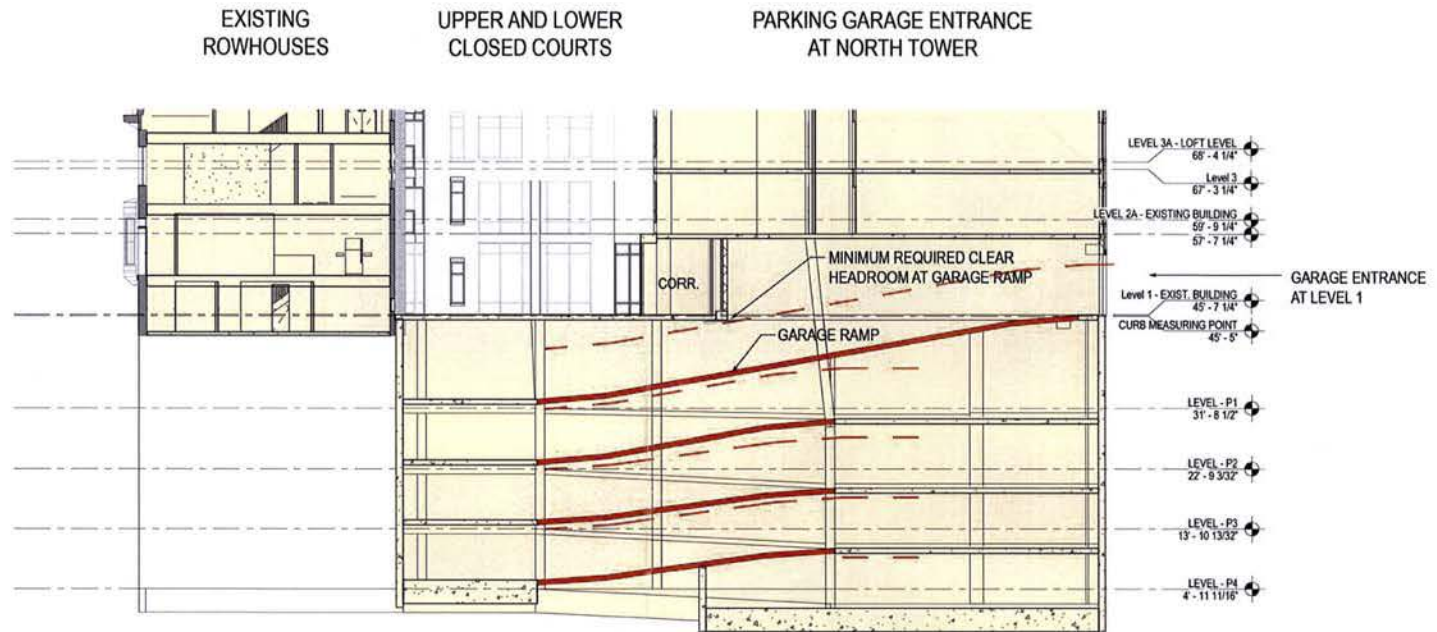
Project Address
455 I (Eye) Street, NW
Washington DC 20001

Scale
3/64" = 1'-0"

Date
12/09/11

COURTYARD RELIEF





BZA - SECTION THROUGH COURTYARD & GARAGE RAMP
 1/16" = 1'-0"

BZA - 4C
455 EYE STREET

Client
 Equity Residential

Project Address
 455 I (Eye) Street, NW
 Washington DC 20001

Scale
 1/16" = 1'-0"

Date
 12/10/11

COURTYARD RELIEF



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

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[REDACTED]

[REDACTED]

May 13, 2008

Paul Tummonds
Pillsbury
2300 N Street, NW
Washington, DC 20037

**Re: Potential Renovation of 457 Massachusetts Avenue, NW and the
Applicability of the DD Regulations**

Dear Mr. Tummonds:

On March 27, 2008, we met to discuss the applicability of the Downtown Development (DD) Overlay District regulations, and in particular §1706.4(b) of the DD regulations, to the potential renovation of the property located at 457 Massachusetts Avenue, NW. It is my understanding that the owner of the 457 Massachusetts Avenue, NW property is investigating the possibility of establishing a permanent commercial or retail use that will help enhance and invigorate the streetscape along the 400 block of Massachusetts Avenue, NW. As discussed in further detail below, I have concluded that that the potential renovation of 457 Massachusetts Avenue, NW will not trigger the housing requirements of §1706.4 of the DD regulations.

Property Description

The 457 Massachusetts Avenue, NW property (Lot 26, Square 516-S, the "Property") is located in the DD/C-2-C Zone District and Housing Priority Area A of the DD District. The Property is also located in the Mount Vernon Triangle Historic District, which was created in 2005. The building located on the Property was constructed in 1887 for residential use. The current assessed value of the improvements on the Property is only \$76,980.

Applicability of the DD Regulations to the Potential Renovation of the Property

The DD regulations, pursuant to §1700.5, state that the requirements and incentives of the DD regulations apply where any additions, alterations or repairs within

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any 12 month period exceed 100% of the assessed value of the building. Given the low assessed value of the building (\$76,980) virtually any renovation of the building on the Property will trigger the DD requirements. Once the DD regulations apply to the Property, the Property will be required to "provide on-site or account for off-site in a combined lot development no less than 4.5 FAR of residential use" (per §1706.4(b)).

However, the DD regulations include two provisions that exempt the Property from having to satisfy the housing requirement enumerated in §1706.4(b). The first provision, §1706.18, states that the renovation of a nonresidential building in existence as of January 18, 1991, that is less than six floors will not trigger a housing requirement. The second set of provisions, §1706.20 and §1707.2-1707.4, provide that the residential requirements do not apply to any lot that is restricted in its development because of its location in the Downtown Historic District, the Pennsylvania Avenue Historic District, or because it is a designated historic landmark.

Renovation of a nonresidential building

I have reviewed a copy of a Certificate of Occupancy dated August 12, 1947 permitting a "Clean and Pressing Shop" with not more than 5 employees on the Property. This Certificate of Occupancy establishes that the Property was used for nonresidential purposes after August 12, 1947. You noted that there is no evidence that residential use ever returned to the building on the Property. The building on the Property is also only three stories in height. For these reasons, the housing requirements do not apply to the Property as §1706.18 is applicable in this instance.

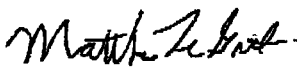
Renovation of Historic Structures in the DD Overlay District

The purpose of §1706.20 is to recognize that historic landmarks and properties located in the two original historic districts in the DD area are prohibited from the additional development opportunities that the DD regulations provide. Thus, such historic buildings and properties are not required to provide residential use.

The Mount Vernon Triangle Historic District was established in 2005, with the Building on the Property noted in the description of the historic district. The only reason why the Mount Vernon Triangle Historic District is not listed in §1707.2 or the Property is not listed in §1707.4, is that the Mount Vernon Triangle Historic District was not in existence at the time these sections were created. I agree that the intent of the DD regulations is that historic properties in the DD area should not be subject to the housing requirements of §1706.4. Therefore, the Property (which is subject to the same historic constraints as the properties listed in §1707.2 and §1707.4) should not be subject to the housing requirements of §1706.4(b).

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For all of these reasons, I have determined that the potential renovation of the Property is not subject to the housing requirements of §1706.4(b). Please feel free to contact me if you have any questions regarding the issues addressed in this letter.

Respectfully, 
Matthew Le Grant

File Letter of Determination to Tummonds re DD Req Exemption of 5-13-08

Exhibit C to Exhibit B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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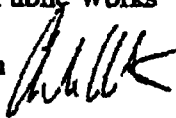
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Office of the Director

MEMORANDUM

TO: Roland Driest, Surveyor
Office of the Surveyor
Department of Public Works

FROM: Andrew Altman
Director



DATE: June 5, 2000

SUBJECT: Comments on Yale Laundry Large Tract Review

BACKGROUND

Location

Yale Steam Limited Partnership has submitted an application for Large Tract Review (LTR) to develop Lots 6, 67, 68, 73, 74, 78 and 87, known as the Yale Laundry and Norwitz sites, in Square 514. Square 514 is located in the northwest quadrant of the District and is bounded by M Street on the north, Fourth Street on the east, New York Avenue and L Street on the south and Fifth Street on the west. Brown's Court, which is an east-west alley, bisects the square and separates the Yale Laundry and Norwitz sites from the existing residential lots in the northern portion of Square 514. The Mount Vernon Square neighborhood, which is generally located north of New York Avenue between New Jersey Avenue and Ninth Street is immediately adjacent to the proposed development. This neighborhood contains primarily row houses, apartments and some institutional structures. There are a few vacant lots interspersed within this neighborhood. Along New York Avenue, within the general vicinity of the proposed project, the area contains primarily vacant land and a few commercial uses. The Yale Laundry portion of the site slopes upward approximately ten feet from New York Avenue towards Brown's Court. The grade change on the Norwitz portion of the site is more gradual.

The Yale Laundry portion of the site contains two industrial structures, the original commercial laundry building constructed in 1902 and enlarged in 1924 and the 1919 stable garage. Both of these buildings have been designated as historic

landmarks and are listed on the District of Columbia Inventory of Historic Sites. The Norwitz site is presently occupied by a one-story industrial structure that was previously used as a book bindery. This building is not considered a contributing building to the Mount Vernon Square Historic District. The entire development site has been vacant for at least 15 years.

Comprehensive Plan

The Comprehensive Plan Generalized Land Use Map places the immediate area of the proposed Yale Laundry project in a moderate density residential land use category. The moderate density residential land use designation generally encourages row houses and garden apartments as the predominant use. The site is zoned DD/C-2-C. The DD/C-2-C zone district permits matter-of-right buildings with a height of 130 and a floor area ratio (FAR) of 8.0, of which no more than 4.5 FAR must be used for residential use.

It should be noted that the Generalized Land Use Map is intended to be generalized in nature, and while the subject site is shown on the map as being in a moderate density residentially designated area, it sits on the edge of areas designated for high density residential and commercial uses. As the Committee of the Whole Report concerning the original Land Use element states, "The feature that distinguishes the Land Use Element from the other District elements is the inclusion of generalized land use maps. The maps provide a graphic depiction of the land use policies in a generalized manner. They do not identify specific parcels or properties. This "soft-edged" character is intended to provide guidance while affording needed flexibility."

The site of the proposed Large Tract Review is located within the Mount Vernon Square Historic District and within Housing Priority Area A of the Downtown Development District. In terms of the residential requirement for properties located within the DD/C-2-C zone district, it was determined by the Zoning Administrator that the Yale Laundry portion of the proposed project is exempt from this requirement, since the entire site has been designated as a historic landmark. The Norwitz portion of the site, while being in a historic district, does not have historic landmark status. Consequently, the residential requirement applies to that portion of the site.

Proposed Project

The Yale Laundry portion of the site, which consists of Lots 6, 67, 68, 73, 74 and 87, contains approximately 52,516 square feet of land area. The site is located immediately west of the First Tabernacle Church of God and Saints of Christ, which is also a historic landmark within the Mount Vernon Square Historic District. The proposal calls for the conversion of the Yale Laundry complex into a hotel. The original 1902 laundry building would be transformed into the lobby area and restaurant for the hotel. The 1924 addition to the 1902 building would be reused as a small gym and business center. The 1919 stable garage would be converted to retail space. Two hotel towers, with a total of 406 rooms, would be constructed on the vacant land between the existing historic structures.

The eastern tower of the hotel, which would be 120 feet in height, would be set back from the property line approximately 30 feet and would run parallel to New York Avenue. In front of the east tower at the property line, there would be a four story, approximately 42-foot high meeting facility that is adjacent to the First Tabernacle Church of God and Saints of Christ. The other tower of the hotel would be 100 feet in height and located immediately west of the original laundry building across an existing 15-foot wide alley. This tower would run perpendicular to New York Avenue along side of and behind the 1919 stable building.

The Norgwitz portion of the site is located immediately east of the 100-foot high hotel tower. The site would contain approximately 17,194 square feet of land area. The existing one-story industrial structure that had been previously used as a book bindery would be razed. A ten-story, 130-foot high mixed-use building would be constructed on the site in place of the existing structure. The first two stories above grade would be dedicated as parking for the building. The next two stories would be used as commercial office space. The remaining six stories would contain 42 loft apartment units. This portion of the development will contain a residential FAR that is equal to the 4.5 required by the Zoning Regulations for properties in the DD/C-2-C zone district of the Downtown Development District.

REVIEW PROCESS

The Large Tract Review application for the Yale Laundry development was filed with the Office of Planning (OP) on December 28, 1999. Copies of the submission were mailed to Advisory Neighborhood Commission (ANC) 2C and to property owners within 200 feet of the site on January 6, 2000. A formal presentation on the project was made to the community by representatives of the Yale Steam Limited Partnership at a regularly scheduled monthly ANC meeting on February 2, 2000. A second presentation to the community was by representatives of the Yale Steam Limited Partnership at an additional community meeting with the Mount Vernon Square Neighborhood Association on February 15, 2000. The deadline for written comments on the project was March 10, 2000. ANC 2C and the Mount Vernon Neighborhood Association wrote letters of support for the project. In accordance with the Large Tract Review procedures, OP also requested comments on the submission from the Department of Consumer and Regulatory Affairs, Department of Fire and Emergency Medical Services, Department of Public Works, Metropolitan Police Department and the Office of Corporation Counsel.

ISSUES ANALYSIS

Community Concerns

The applicant made a presentation on the project to ANC 2C on February 2, 2000 and to various interested parties within the community at the Mount Vernon Neighborhood Association on February 15, 2000. At both the ANC 2C and Mount Vernon Square

Neighborhood Association meetings, the community had questions regarding the project relative to traffic and loading, the mix of uses and the height of the proposed hotel towers in relation to the existing Mount Vernon Square neighborhood. The applicant addressed these issues at both meetings. At the Mount Vernon Square Neighborhood Association meeting by a vote of 36 for and 15 against, the residents of the Mount Vernon Square neighborhood voted to support the proposed Yale Laundry Large Tract Review development.

The primary loading area and vehicular access to the facility will be off of New York Avenue due greatly to the fact that Brown's Court narrows significantly to the rear of the site. There would be four additional loading facilities located to the rear of the hotel and apartment buildings. These loading docks would service only smaller vehicles on a periodic basis.

In terms of uses, the community had questions regarding the lack of a residential component on the Yale Laundry portion of the site. Yale Laundry was designated as a historic landmark, and consequently was not subject to a housing requirement under the zoning requirement of the Downtown Development District. However, it was noted by the applicant at these meetings that if it were subject to a housing requirement, it would be difficult to develop the site with residential. The Historic Preservation Review Board (HPRB) did not want any new development above the existing historic buildings on the Yale Laundry portion of the site. This determination by HPRB, along with the significant change of grade along the rear of the Yale Laundry portion of the site, severely limited the viability of residential uses for that portion of the site. In order to accommodate the additional amount of residential that would be required in a DD/C-2-C zone district, the footprint of such a residential structure would be significantly larger than the footprints of the proposed hotel towers. The applicant argues that the current FAR of the project is 5.24; with residential and the amount of commercial development necessary to make an economically viable project, the FAR would be the full 8.5 to which the project is entitled. Consequently, a residential building would have to be located closer to the existing residential neighborhood to the north of the site. Additionally, the proposed units for a residential structure on the Yale Laundry portion of the site would have a floor to ceiling height of approximately eight feet, which according to the applicant would not make them very marketable units.

In terms of actual proposed uses, the hotel was determined as an appropriate use for the site, when considering the proximity of new convention center to the Yale Laundry site. The new convention center is currently being constructed on the six squares immediately north of the Mount Vernon Square Library. The proposed hotel would be located within walking distance of the new center. It would also provide the kind of evening and weekend activity to enliven the area, where residential use could be difficult to establish given the traffic volumes on New York Avenue.

In terms of the height of the two hotel towers, the applicant stated that it was also, in part, related to the determination made by HPRB in their November 1999 meeting. At that

meeting, the applicant presented two schemes to HPRB. In one scheme, a portion of the eastern hotel tower was to have been built on top of the 1924 wing to the original laundry structure. The hotel would be eight stories or approximately 90 feet in height. In the second scheme, the eastern hotel tower was moved completely off of the 1924 wing and the height of the two towers would be increased to 130 feet. HPRB favored the second scheme. The second scheme would also allow for a greater amount of open area between the two hotel towers and give greater prominence to the smokestacks of the laundry warehouse.

As part of the height issue raised by the community, specifically that of light and air, the applicant conducted a light study to determine the effect of two 130-foot high hotel towers versus two 90-foot high towers on the surrounding residential neighborhood to the north of the site. The study looked at the sun position during the winter equinox and the summer solstice as it relates to the two proposals. This study determined that there would be little effect by an additional 40 feet added to each tower. However, it should be noted that the Historic Preservation Review Board (HPRB) approved a reduced height for the two towers in its meeting on April 27, 2000.

Transportation

The Department of Public Works (DPW) believes that the proposed project can be accommodated by the existing transportation system in the area. In order to complete their analysis, DPW examined the number of trips generated by the proposal, the level of service of the surrounding street intersections, the level of parking proposed within the facility, the proposed loading facilities and access and circulation to and within the site.

With regard to trip generation, the applicant's traffic analysis factored in known future development within the surrounding area, such as the new Convention Center, which will be located approximately 1,200 feet from the proposal. According to this analysis, the Yale Laundry development would generate approximately 225 inbound and 128 outbound trips during typical morning peak hours. During the typical evening peak hours, there would be 189 inbound and 236 outbound trips. The trip generation rates used by the applicant are higher than the rates normally used by DPW for a similar development located adjacent to the Downtown area, thus DPW estimates that the proposed project will generate less traffic than the applicant's forecast.

The analysis of capacity and level of service indicates that most of the critical intersections leading to and from the site will operate at an acceptable level of service during both the morning and evening rush hour, with the exception of the intersection of New York Avenue/Fourth Street and I-395. The New York Avenue corridor serves as an important regional link to Baltimore and the Maryland suburban areas northeast of the city. The intersection currently operates at a level of service "F" during both the morning and evening rush hours. DPW notes that the capacity deficiency along the New York Avenue corridor is beyond the scope of the Yale Laundry project and that several proposals are being considered to increase the capacity of this intersection.

DPW believes that the concept of shared parking between the mix of uses within the project will be successful. The proposed project will provide 287 parking spaces compared to the 233 parking spaces required under the Zoning Regulations. Consequently, the amount of parking provided will be adequate to accommodate the mixed-use development and to minimize parking spillover into the residential neighborhood.

In terms of loading, the development will exceed the requirements for loading and delivery berths for a project of its size. The garage and main loading area for the development will be accessed from New York Avenue. Turns into the facility will be limited to right turns only. The proposed development will provide three loading berths and one service delivery area for the hotel and one loading berth and delivery area for the residential/office building. The Zoning Regulations require a total of three loading berths and two delivery areas for the entire development.

Environmental

The Department of Health Environmental Health Administration (EHA) reviewed the Large Tract Review application and had questions regarding the air quality with the additional vehicular traffic generated by the project, the future usage of the existing smokestack and the possibility of lead-based paint located on the site. The applicant will have to do an air quality analysis as part of the permitting process. In terms of the smokestack, it will not be used to discharge flue gasses. The stack will be reconstructed as architectural embellishment that evokes the past industrial character of the site. In terms of the possibility of lead base paint on the site, EHA requests that the applicant work with their agency to determine the means by which the paint may be disposed of during demolition to ensure that no lead dust is released in the atmosphere.

Historic Preservation

The Yale Laundry portion of the site received conceptual approval for the design from the Historic Preservation Review Board (HPRB) in November 1999. The Norwitz portion of the site is not a historic landmark. However, the new construction on that portion of the site will have to be reviewed by HPRB, since the building is located within a historic site.

In the staff report to the HPRB, it was noted that the site of the proposed development is a historic landmark within the Mount Vernon Square Historic District. It is the only large vacant site in the historic district that is zoned for commercial use and allows a height of 130 feet. From a design perspective, the site's frontage on New York Avenue and the varied heights of the existing historic buildings within Square 514 makes the site one of the few locations within the historic district that is appropriate for higher new construction.

Compositionally, the restored historic buildings would be placed at the center of the new construction. The two hotel towers, which are the larger scale elements of the design, would be setback from the New York Avenue frontage of the site. Smaller scaled pieces of the new construction would be placed in front of the larger elements and adjacent to the historic buildings along New York Avenue. According to the report, the stepping down from the larger scale would offer a pleasing, pedestrian streetscape that is presently absent from the block. Additionally, while the stepping down of the new construction at the building line establishes a compatible context with the lower existing buildings on the New York Avenue frontage, it also relates to the larger scale composition that helps to address the wide proportions of New York Avenue.

While zoning permits a height of 130 feet on the Yale Laundry site, HPRB recommended to reduce the height of the two hotel towers in order to ensure that the scale of the proposal relates better to the existing surrounding historic structures. Consequently, in HPRB's meeting on April 27, 2000, the final height and massing of the Yale Laundry portion of the project was approved by a vote of 6 to 4. The western hotel tower will be 100 feet in height and will extend westward to encompass a portion of the garden space between the hotel and the apartment building that was part of an earlier scheme. The eastern tower, which will be located adjacent to the historic Fletcher Chapel, will be 120 feet in height. This tower will be set back from New York Avenue by approximately 30 feet, so as not to overshadow the church or the existing smokestack on the site. The five-story meeting facility in front of the eastern tower will be reduced by one floor. The reduction in height will allow the meeting facility to relate better to the height of the church.

RECOMMENDATION

The New York Avenue corridor presents a difficult zoning challenge. On the one hand, the passage of thousands of automobiles daily argues for high density commercial or mixed-use development, but the location of low scale town houses immediately to the rear makes that problematic. On balance given the proposed height reduction, the addition of the Yale Laundry Large Tract Review development would provide an immediate benefit to the surrounding neighborhood and to the District on a number of levels. The site of the proposed development has been vacant and underutilized for a number of years. The redevelopment of the New York Avenue corridor, the Mount Vernon Square neighborhood and the area surrounding the new Convention Center is vital to the District. The proposed residential component of the development supports the notion of housing within the Downtown Development District. The hotel component will help to service tourists, enliven the streetscape with activity and provide lodging for individuals using the convention center. Additionally, the proposed project will generate increased tax revenues for the District. Hotel usage returns substantial tax revenue to the District and generates a range of jobs.

Therefore, the Office of Planning recommends approval of the approval of the Yale Laundry Large Tract Review project in Square 514 with the following conditions:

- That the design of the proposed development is based on the final recommendations of the Historic Preservation Review Board (HPRB);
- That the applicant works with the Department of Health Environmental Health Administration (EHA) to ensure that the proposed project will comply with all environmental health regulations (both during the demolition and construction process); and
- That the applicant continues to work with the surrounding community to ensure that there will be no adverse impacts arising during the construction or operating phase of the hotel/residential development.