



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Office of the Chief Building Official
Inspections & Compliance Administration
Permit Operations Division

NH Street Partners Holdings, LLC
11 E 44th Street
Floor 1000
New York, New York 10017-0058

NOTICE OF VIOLATION AND ORDER FOR CORRECTION OF CONDITION

During a recent review and approval of a building permit application for 2121 M Street, NW, D.C. Department of Consumer and Regulatory Affairs (“DCRA”) officials determined that there are windows in your building located at 1200 New Hampshire Avenue, NW, (“Property”) that are on the lot line. As the owner of the Property, you are responsible for making any changes to the windows to maintain the building compliance with the required fire separation distance. Pursuant to DCMR 12A § 704.8.3.5¹, you have the obligation to make changes to effect compliance.

This serves as official notice that you must submit a building permit application and associated submittal documents which initiates the process of bringing the Property into compliance with 12A DCMR § 704.8.3.5. Pursuant to DCMR 12A § 105.5 D.C. Official Code § 42-3131.01(a), DCRA hereby ORDERS you to obtain all required building permits and commence work within 30 days of issuance; in addition, you must complete all work associated with the permit(s) and request required inspections in accordance with all applicable code provisions no later than sixty (60) days from the date of permit issuance. If you fail to make the required changes, DCRA is authorized to cause the necessary work to be done. The cost of work shall become a lien against the Property.²

¹ **704.8.3.5 Owner's Responsibility:** The owner of the building where openings are allowed pursuant to Sections 704.8.3.1 through 704.8.3.4 is responsible for making any changes in the exterior wall or its appurtenant protective systems, to maintain the building compliance with this code, whenever changes occur in the exterior envelope of any building within a fire separation distance of 10 feet (3048 mm) or less of that wall, when those changes might affect compliance with this code. The responsibility of the owner shall include but not be limited to, the following: blocking of openings; upgrading of opening protectives; removal or extension of parts of the required sprinkler system protecting the openings; or any other provisions deemed necessary by the code official to restore the level of safety provided by this code at the time the openings were permitted.

² **704.8.3.7 Abatement of Unsafe Conditions:** If the owner of a building or structure where any openings in exterior walls were allowed pursuant to Sections 704.8.3.1 through 704.8.3.4 fails to maintain in working order the protective systems required, or fails to proceed to make any changes required by the code official under the authority of Section 704.8.3.5, the code official is authorized to cause the necessary work to be done, in the interest of safety and welfare of the public, in accordance with [D.C. Official Code § 6-801 - § 6-805](#). The cost of work shall become a lien against the property of the offending owner, to be recovered by the District of Columbia through appropriate action.

RIGHT TO SHOW CAUSE

You have the right to show cause why you should not be required to correct the above-referenced violative condition. To request a show cause hearing, your request must be mailed to the Office of Administrative Hearings at 441 4th Street, NW, Suite 450N, Washington, DC 20001. Alternatively, you may hand-deliver your appeal or request to the Office of Administrative Hearings at One Judiciary Square 441 4th Street, NW, Suite 450N, Washington, DC 20001. The deadline for such a request is ten (10) business days following your receipt of this Notice.

Any questions about this Notice and Order may be directed to me on 442-4542 or via e-mail at Rabbiah.Sabbakhan@dc.gov.

Date

3/4/14


Rabbiah Sabbakhan
Chief Building Official

ZONING COMMISSION ORDER NO. 745
Case No. 92-17
PAGE NO. 11

- d. That what is before the Zoning Commission in this proceeding is not a referendum on or a precedent for the continuation or abandonment of the residential goals of the Downtown element of the Comprehensive Plan or the Downtown Development District. The specific zoning of this property is the only point at issue. If the Council had acted earlier to clarify the intent of the Generalized Land Use Map, the DD would likely never have been applied to this site. There is no other site designated for high density commercial on the Land Use Map which has been included in a housing priority area under the DD District.
- e. At the time that the building at 1275 K Street was constructed, the existing zoning permitted a building of 8.5 FAR and 130 feet in height. The present zoning permits a height of 130 feet and an FAR of 10.0. The owner of the 1275 K Street building has no reason to expect that windows which were constructed face-on-line with the subject property could be continued without interruption. The representative of the owner stated that investigations were made at the time of the purchase of the building into the ability to build and the economic impact of building a building on the property line. It is not reasonable for the owner of the subject property to bear the burden associated with the adjoining owner's decision not to set its windows back from the lot line. The Office of Planning did not raise any public policy issues associated with impacts on the adjoining building. With respect to the impact on value, stability of land values generally suggests that properties similarly situated should be treated in the same manner. This site is the only zoned site within the three squares identified by the Council which is not now zoned C-4. In addition, the Commission finds that the testimony of the opposition did not credibly establish that there would be a significant adverse loss to the city, all factors considered, while the applicant's submission and testimony identified the positive economic benefits which would result.
- f. That the height and density standards of the existing DD/C-3 District are exactly the same as those of the proposed C-4 District. The drawings prepared by the applicant's architect indicate that the impact on the school of a building built under the DD/C-3-C standards will not be significantly different from the impact under C-4 standards. Additionally, the Commission has determined that there is not a significant difference in

Boarding house - a building or part thereof that provides for compensation, meals or lodging and meals to three (3) or more guests on a monthly or longer basis. The term "boarding house" shall not be interpreted to include an establishment known or defined in this title as a hotel, motel, inn, bed and breakfast, private club, tourist home, guest house, or other transient accommodation. (35 DCR 7627)

Boathouse - a building or structure designed and used to store and provide water access for non-motorized watercraft, including racing shells, kayaks, canoes, sailboats, rowboats, and similar boats. (51 DCR 3440 and 52 DCR 6358)

Building - a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

Building, accessory - a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building.

Building area - the maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft.) in width. Except for outside balconies, this term shall not include any projections into open spaces authorized elsewhere in this title, nor shall it include portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property. (Case No. 62-32, May 29, 1962)

Building, height of – in other than Residence Districts (R), the vertical distance 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 or a point designated by a specific zone district; in Residence Districts (R) the vertical distance measured at the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line to a point designated in the zone district. Berms or other forms of artificial landscaping shall not be included in measuring building height.

The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural grade or the finished grade at the middle of the front of the building to the highest point of the roof or parapet or a point designated by a specific zone district.

Other Issues

As noted, appropriate height limits in zone districts or overlays will be considered in later stages of the zoning review process.

IV. A. 4. Single vs. Multiple Buildings

Existing Practice

A building is defined in the existing regulations as:

A structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one building (11DCMR, § 199).

The first sentence of this definition is actually the definition of a building. The second and third sentences attempt to tackle the issue of when a structure is a single building and when it is multiple buildings. Currently, the line between the two is fluid and dependent on the case at hand.

Issues

Over the past few years the determination of what constitutes a single building for zoning purposes has hinged on the concept of a “meaningful connection.” This has generally been interpreted to mean that some above ground interrelatedness is required, but often only in token fashion. In some instances, a covered walkway has served to combine two structures into one building for zoning purposes. Often two buildings are combined into one building by a single locked doorway.

Recommendation A.4 (Recommendation 4)

A “building” is a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or tangible property. When separated from the ground up or from the lowest floor up by common division walls, each separate portion shall be deemed a separate building unless there is open access between all portions on at least half of the shared floors. Two or more structures that are in all other respects physically separate from each other can not be combined to form a single building through the introduction of any type of physical connection between the structures, including a trellis, walkway, garage or tunnel, at any location.

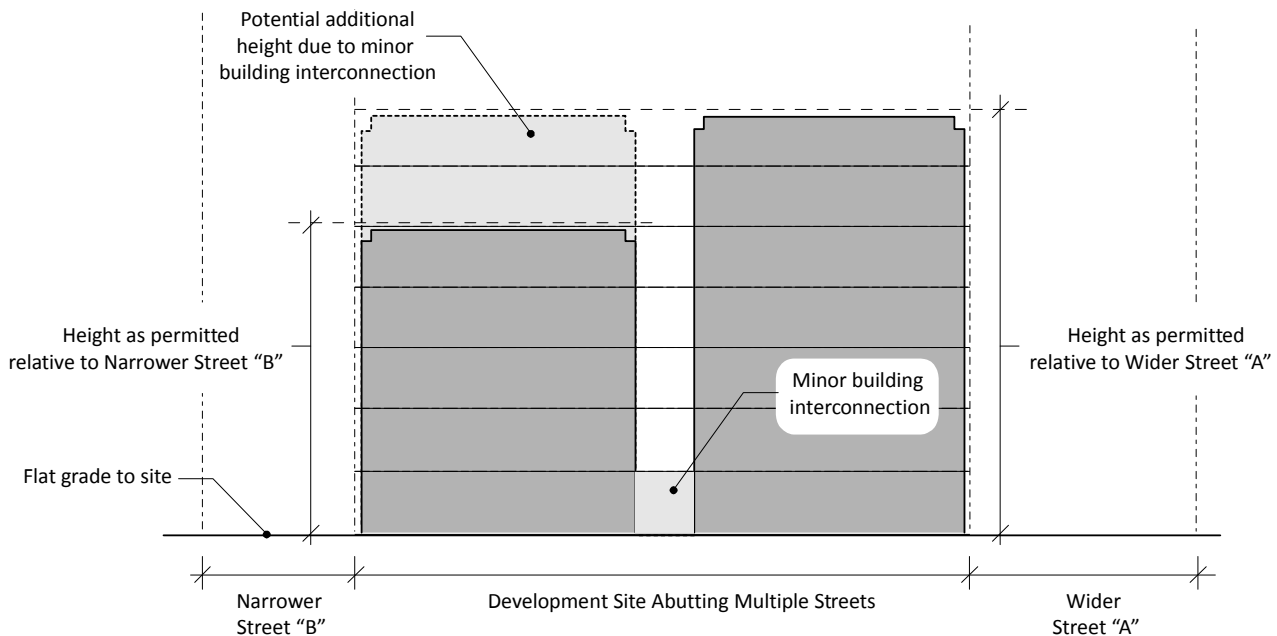


Figure 4

Analysis

The maximum height a building may achieve is usually related to the width of a street on which the building has frontage. Where a building is on a site that is bounded by streets permitting different building heights (Figure 4), there is an economic incentive to presenting a structure as part of a building having frontage on the street permitting the greatest height. This has led to seemingly separate buildings being configured to appear as one with a building having frontage on the widest street.

In the above figure, assuming a Square has uniform zoning, the building on Street A could rise to 130 feet, but a building on Street B could rise to only 90 feet. However, by “attaching” the two buildings so that they could be considered one building, the building on Street B could also rise to 130 feet. Conceivably there could be a series of attachments that would let all building construction with frontage on Street B pull its maximum height from the building face on Street A.

The Commission has made it clear that such connections must be “meaningful” and above-grade. While this has precluded connections through below-grade parking garages, there has been uncertainty about whether multiple towers rising from a common above-ground podium are separate buildings or one single building, and whether relatively minor connections such as single story corridors or even open-air arcades will be considered meaningful enough to be considered one building.

This has led the Zoning Commission to become more demanding when considering the sufficiency of these connections, and has led OP to develop a more clearly defined concept of what constitutes a single building. It emphasizes the sharing of a certain percentage of floors.

Comments and OP Response

- *Comments have been generally positive on this concept, especially on the floor plate sharing.*
- *The most common concern relates to the sharing of mechanical systems. There have been questions about whether using decentralized systems in larger buildings might lead to greater efficiency; and whether – when an addition to an existing building is constructed – it must interconnect with all of the existing structure’s systems to be considered part of a single building.*

In response to these concerns, OP has removed the recommendation that a single building must share mechanical systems throughout. The recommendation now only includes floor plate connections.

- *There is also concern that the proposed language would have the unintended consequence of preventing mixed use buildings. In order to share floorplates throughout the structure, a large building would likely be built with only one use, such as office, at the expense of a second use like residential.*

This is an important concern. If an office and residential structure next to each other are deemed two buildings and do not have equal frontages, one may be forced to be shorter than if it was combined with the other. This situation could prompt developers to build a large single-use structure instead of two structures of different uses.

IV. B. MEASURING A BUILDING

Whether building height is limited by the zoning district or the Height Act, the height has to be measured and the rules for measurement should be clear.

In general, the existing regulations for height measurement can be summarized as:

- General starting point of measurement is the curb opposite the middle of the front of building
- Measuring in Specific Zones and Heights
 - Zones of $\leq 40'$: Finished grade at the middle of the front of a building to the ceiling of the top story
 - Zones of $\leq 60'$ with a terrace of $\leq 5'$: measure from top of terrace to highest point of roof
 - Zones of $\geq 90'$: measure to highest point of roof, excluding parapets $\leq 3'$

this analysis and the language of the Height Act, OP does not propose any change to this recommendation.

Recommendation #2

When any portion of a building abuts a property line that is directly across a street from a public open space or reservation, the building's maximum allowable height may be determined by the width of any single right of way that is not divided by the public open space or reservation and that is adjacent and parallel to any single side of the open space or reservation

3. Business vs. Residential Streets

No new analysis or change to this recommendation.

Recommendation #3

A "Residence street" would be any block face that contains any residential property located in a low to moderate density zone district, as those zones may be described after completion of the zoning review process, or any block face entirely made up of properties of any existing residential zone.

A "Business street" would mean any other block face. As with Recommendation A.1, a property adjacent to both a commercial and a residence street could choose its frontage and utilize the greater of the zones' permitted heights.

4. Single vs. Multiple Buildings

Both before and after the hearing, OP has received dozens more examples of single buildings that do not meet the tests outlined in our original recommendation. Based on the totality of comments received, OP retracts the suggested requirement that there be a connection on multiple floors.

There are three tests that OP recommends be included in the distinction between single and multiple buildings:

- 1) the connection is above ground, and
- 2) the connection is enclosed, and
- 3) the connection either:
 - a) is common space shared by users of all portions of the structure (e.g. a lobby or recreation room), or
 - b) allows open passage between separate portions of the structure (e.g. an unrestricted doorway or walkway)

One issue remains with regard to test #2 above. Some buildings in the District have been built with private alleys for truck or vehicle access. There are examples of buildings where structures completely separated by a private drive were connected as one building by a covered walkway across the driveway that also allowed truck passage beneath the cover. Comments by Holland & Knight have raised this issue both to avoid the creation of non-conformity in existing buildings and to determine whether this type of connection should be considered in determining single

buildings in the future. OP is open to a review of these situations on a case-by-case basis, but hesitates to recommend a blanket definition of building that would allow roofed-only connection with no enclosed walls across alleys, private or otherwise. This potential exemption is not included in our recommendation below, but should be discussed by the Commission in deciding on this recommendation.

Recommendation #4

A “building” is a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or tangible property. ~~When separated from the ground up or from the lowest floor up by common division walls, each separate portion shall be deemed a separate building unless there is open access between all portions on at least half of the shared floors. Two or more structures that are in all other respects physically separate from each other cannot be combined to form a single building through the introduction of any type of physical connection between the structures, including a trellis, walkway, garage or tunnel, at any location. In order to be considered one “building” for zoning purposes, separate structures must be connected in the following way:~~

1) the connection is above ground, and

2) the connection is enclosed, and

3) the connection either:

a) is common space shared by users of all portions of the structure (e.g. a lobby or recreation room), or

b) allows open passage between separate portions of the structure (e.g. an unrestricted doorway or walkway)

5. Location of Bottom Measuring Point

For the reasons outlined in the report and the testimony at the public hearing, OP recommends that the Commission adopt Option 2 of the original recommendation (see below). Option 2 reflects the existing process for measuring height that has been used for over 60 years. To change the precedent would result in the creation of dozens, if not more, cases of non-conformity across the city and the potential to further limit the already restrictive development potential in new development areas.

Recommendation #5

~~Clarify the determination of the measuring point for building height when a building faces more than one street. Option 1: The street chosen to determine the maximum allowable height must also be used to determine the point from which building height is measured. Option 2: Any abutting street which a building faces may be used to determine the measuring point regardless of which abutting street is used to determine maximum allowable height.~~

6. Elevation of Bottom Measuring Point

No change to the original OP recommendation. For the draft text that will follow preliminary approval of this concept, OP will examine an exception to this rule for when there is no curb.

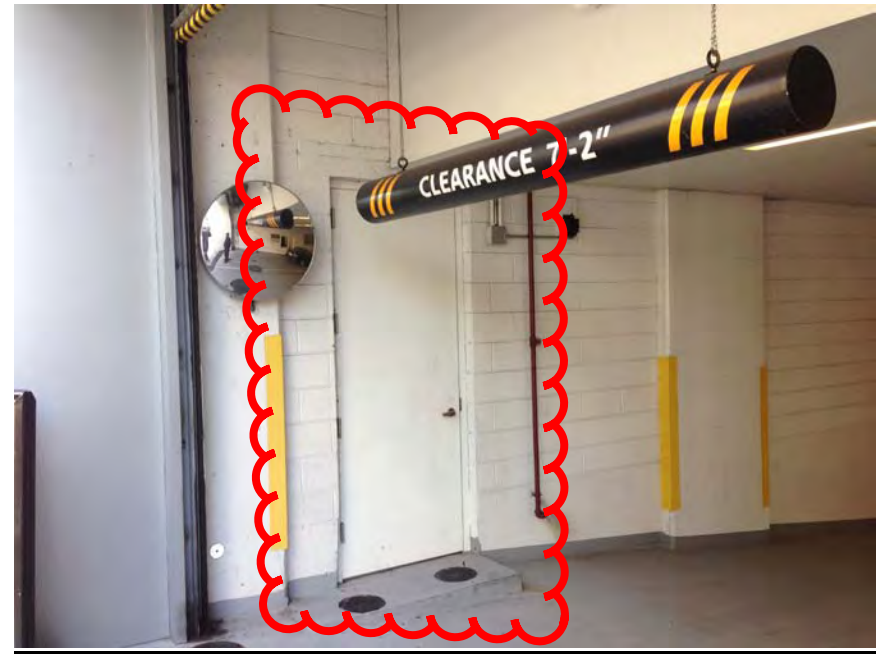
Recommendation #6

EXHIBIT S

1050 K STREET / 1099 NEW YORK AVENUE CONNECTION



1050 K STREET



1099 NEW YORK AVENUE

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



March 26, 2012

Christy Moseley Shiker
Holland & Knight LLP
2099 Pennsylvania Avenue, NW - Suite 100
Washington, DC 20006

Re: Addition to Capitol Plaza Development
16 -20 M Street, NE (Lots 251 and 839, Square 672)
33 Patterson Street, NE (Lot 852, Square 672)

Dear Ms. Shiker:

This is to confirm the substance of our discussions on December 6, 2011, regarding the proposed development of the property located at 16 -20 M Street, NE (Lots 251 and 839, Square 672) ("M Street Property"), highlighted in yellow on the attached plat, and 33 Patterson Street, NE (Lot 852, Square 672) ("Patterson Street Property"), highlighted in pink on the attached plat. The M Street Property and the Patterson Street Property are collectively referred to as the "Subject Properties". At the time of the meeting, you advised me that your client was the contract purchaser of the Subject Properties, but the client has since become the owner of the Subject Properties.

You informed me that your client is also the owner of the property known as Lots 850 and 851 in Square 672, which are highlighted in green on the attached plat. Lots 850 and 851 are part of Record Lot 257, which is outlined in blue on the attached plat and for which a single building is contemplated pursuant to the Zoning Administrator Reliance Letter dated March 24, 2009 ("March Reliance Letter"), a copy of which is attached. Phase I of the Capitol Plaza building was constructed in or around 2009 and is located on Lot 849 within Record Lot 257. Phases II and III of the Capitol Plaza building are planned to be located on Lots 850 and 851, with Phase II being developed on the east side of the combined site adjacent to Lot 849 and Phase III being developed on the west side of the combined site.

The Subject Properties and Record Lot 257 are zoned C-3-C and are located within the North Capitol Receiving Zone for transferable development rights ("TDRs"). The Subject Properties are located to the west of Record Lot 257. You requested that I review whether the Subject Properties can be combined into a single lot with Record Lot 257 and asked that I respond to specific questions relating to expanding the single building to be known as Capitol Plaza. For purposes of this letter, the Patterson Street Property and the M Street Property are anticipated to be constructed together as Phase IV of the Capitol Plaza Building.

In our meeting, we discussed the following items.

- Subdivision for Single Lot of Record: In order to create a single building, you must subdivide the Subject Properties into a single lot of record with Record Lot 257. Assuming that a subdivision plat is drafted by the DC Surveyor's Office and is processed and approved by the required agencies, the Zoning Administrator's office will approve such a subdivision for zoning purposes.
- Measuring Point for Building Height: Because the single building will front on three streets, height may be measured from the street elevation which allows the greatest height. The width of 1st Street (110 feet) is used to determine the maximum permitted height, which is 130 feet under the TDR Receiving Zone. According to the March Reliance Letter, Phase I measured its height from the level of the curb opposite the middle of the front of the building on Patterson Street. As the subsequent phases are constructed, including the Phases II and III on Lots 850 and 851 and Phase IV on the Subject Properties, the middle of the building and the point of measurement for height will move further to the west on Patterson Street, which slopes up as it goes to the west. The middle of the front of the building of the currently constructed Phase I of the Capitol Plaza building is at elevation 48.09. The middle of the front of the building when Phases II and III of Capitol Plaza are added will be at elevation 50.98. Upon construction of Phase IV, the measuring point will be the level of the curb opposite the middle of the front of the building on Patterson Street, which will be elevation 53.00. This will be the ultimate measuring point for the overall single building. You advised me that there will be in place a covenant allocating development rights among the four phases and committing the owners to maintain the building as a single building under the Zoning Regulations. Accordingly, given the facts stated above, you may measure the heights of all four phases from the ultimate measuring point which will result when all the phases are considered, which will be the level of the curb opposite the middle of the front of the building on Patterson Street, which will be elevation 53.00.
- Single Building Connections: The Zoning Regulations provide that the existence of communication below the level of the main floor does not make a single building. Conversely, the existence of communication at or above the level of the main floor does create a single building. In the March Reliance Letter, the connection for Phase I and Phase II of Capitol Plaza was specifically identified and approved. The proposed connections for Phases III and IV have not yet been determined. Assuming that the separate structures (i.e., each phase) are connected at or above the level of the main floor (the floor on which the principal entrance to the building is located), as required by the regulations currently in effect, the entire building will be considered as a single building and will be eligible for a maximum height of 130 feet and a maximum FAR of 10.0, provided that sufficient TDRs are vested in the property.
- Alternate Phase Plan: You advised me that your client is considering an alternative phasing plan to develop Phase III or Phase IV in advance of Phase II. In the event that Phase III or

Phase IV is constructed before Phase II, you have indicated that a breezeway supported by columns and having a roof that is at least 51 percent solid would be constructed across a portion of the Phase II property, and Phase III property if applicable, to connect the new portion of the project to the existing Phase I structure.

Section 199 of the Zoning Regulations defines the term "building" as:

a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

Both the Board of Zoning Adjustment and the Zoning Administrator's office have interpreted the term "building" to include trellis-covered connectors, provided that the trellis roof is at least 51 percent solid and provides the necessary supporting columns or walls. Accordingly, so long as the proposed breezeway is supported by columns or walls and has a roof that is at least 51 percent solid and that the breezeway leads to and from a door opening into a common area of the building at each end, the breezeway across a portion of the Phase II and Phase III property will be sufficient to create a single building until such time as Phase II and Phase III are constructed.

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

LOCATC

[ABOUT US](#) [L. RON HUBBARD: EDUCATOR](#) [EDUCATION ISSUES](#) [STUDY TECHNOLOGY](#) [SCHOOLS & PROGRAM](#)

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[HOME » APPLIED SCHOLASTICS ACHIEVEMENT PROGRAM \(ASAP\)](#)

Applied Scholastics Achievement Program (ASAP)

The Applied Scholastics Achievement Program (ASAP) is a comprehensive and structured **academic acceleration program** created to turn underperformers into achievers. It uses the tools of Study Technology in a smoothly Integrated program that identifies a student's skill level and brings him or her forward from that point.

ASAP is used widely in community tutoring programs and by traditional one-on-one tutors. It has also been used in schools to supplement the mainline curriculum.

In this unique program, students not only receive targeted tutoring to fill gaps in subject matter, they also learn strategies that enable them to move forward in their studies independently. ASAP provides students with step-by-step methods to recognize and **overcome learning difficulties**.

Whether the student is being tutored in reading or math, vocabulary development is emphasized to ensure complete mastery of each concept. Through the use of examples and hands-on demonstrations and activities, ASAP ensures that each student is actively engaged in the learning process.



M St NE



1st St NE

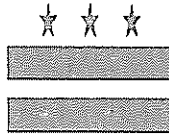
1st St NE



Patterson St NE

North Capitol St

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



March 24, 2009

Norman M. Glasgow, Jr.
Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W. - Suite 100
Washington D.C. 20006

Re: 1200 1st Street, N.E.

Gentlemen:

This is to confirm the substance of our discussion on Wednesday, February 11, 2009, concerning the development known as Capitol Plaza, located on the west side of 1st Street between M and Patterson Streets, N.E. The property is known as lot 257 in Square 672. The eastern portion of the lot is improved with an office building known as 1200 1st Street. The western portion of the lot is used as a surface parking lot. The property is zoned C-3-C and is located in the North Capitol Receiving Zone for the use of transferable development rights (TDRs) under the Downtown Development District (Chapter 17 of 11 DCMR).

Pursuant to the receiving zone provisions, a building on a property which is permitted to have a height of 130 feet under the Act of 1910 may have a floor area ratio (FAR) of 10.0. Since 1st Street is 110 feet wide, a building which fronts on 1st Street may have an FAR of 10.0. Pursuant to certain certificates of transfer, 260,000 square feet of TDRs were transferred to this property in 2004.

The Capitol Plaza project is a phased development. The existing office building is the first phase. The project ultimately will include construction of additional phases on the parking lot portion of the lot. The latter phases would be additional office space or possibly a hotel. You advised that it is your intention to connect all of the construction to form a single building, so that the entire property would be eligible for the 130 foot height and 10.0 FAR based on the width of 1st Street, N.E. The owners of the property have entered into a reciprocal easement agreement under which they are obligated to connect the phases of the development to form a single building under the Zoning Regulations.

A building permit for the Phase 1 office building was issued on April 1, 2005, and a certificate of core completion was issued by the District on January 29, 2007. The Phase 1 building has a height of 130 feet measured from the curb on Patterson Street. The Phase 1 building has a gross floor area of 582,214 square feet.

The building as constructed is to be connected to Phase 2 of the project by a canopy connection at the ground floor level adjacent to the property line on the north side of the building. I reviewed plans, dated December 8, 2006, reissued February 17, 2009, showing the details of the canopy connection, including the Patterson Street elevation. The canopy will span the entrance to the below-grade parking garage and will cover an additional 356 square feet of gross floor area at the ground level. That canopy will connect to the Phase 1 building at the location of an existing doorway to the loading area. You further advised that the canopy would lead into a common area of the Phase 2 building (yet to be designed), such as a lobby, service corridor or loading area.

The Zoning Regulations (§199.1) currently define a building in part as follows:

When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

The effect of this provision means that to be considered a single building, separate structures must be connected at or above the level of the main floor (the floor on which the principal entrance to the building is located). These regulations were in effect at the time that the building permit for the Phase 1 building was issued and are still in effect today.

It is my conclusion that the construction of the canopy as shown on the plans and as described in this letter would be a sufficient means of communication located at the level of the main floor to connect Phases 1 and 2 of the building. That connection makes the Phase 1 building and the Phase 2 building a single building for zoning purposes. As such, provided that sufficient TDRs are vested in the property, the entire building would be eligible for a maximum height of 130 feet and a maximum FAR of 10.0.

Please let me know if I may be of further assistance.

Sincerely, Matthew Le Grant
Matthew Le Grant
Zoning Administrator

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

May 21, 2013



BY FIRST-CLASS MAIL AND ELECTRONIC MAIL

Cynthia A. Giordano
Saul Ewing LLP
1919 Pennsylvania Avenue, N.W.- Suite 550
Washington, D.C. 20006

Re: Paul Laurence Dunbar Apartments (Lot 207, Square 204) ("Subject Property");
Confirmation of Zoning Compliance Regarding Certain Key Development
Parameters of a Planned New Addition

Dear Ms. Giordano:

This is in response to your request via correspondence to me dated May 7, 2013 (Exhibit A), requesting confirmation of compliance with zoning with respect to certain key development parameters of a planned addition ("Addition") to the Paul Laurence Dunbar Apartments ("Existing Building") (collectively "Project"). The Subject Property record lot is bounded by V, 15th and U Streets, N.W., has an area of 55,292 square feet, and is zoned R-5-D.

It is my understanding that the Addition will be connected to the existing Paul Laurence Dunbar Apartments via a trellis structure at grade level. The trellis structure will consist of horizontal beams spanning between the Addition and the Existing Building which beams will support perpendicular members that are spaced no greater than 24" apart. The trellis will provide shelter and passage to and from the Existing Building and the Addition. As described, the connection is sufficient to consider the Project as a single building for zoning purposes pursuant to the definition of "Building" as set forth in Section 199.1.

It is my understanding, based upon Exhibit A and the site plan and development data attached thereto, that the Project contains a total of 212,350 FAR gross square feet which is less than the maximum permitted FAR for the Property which is 4.2 with a 20% Inclusionary Zoning bonus.¹ The maximum height of the Addition at 85'10" is to the top of the roof slab and the

¹ Assuming finalization of a 2602.3(f) exemption by the Department of Housing and Community Development.

rooftop penthouse, which has a maximum height of 15'9" above the top of the roof slab, conform to the R-5-D maximum height standard of 18'-6" as well as the applicable roof structure height standard. The total lot coverage of the Project at 43% meets the maximum 75% standard. The required rear yard of 28 feet 8 inches is met measuring from the centerline of V Street, N.W., which has a width of 80 feet, pursuant to section 404.2. Finally, the amount of parking provided for the Addition at 32 spaces and for the Existing Building at 29 spaces meets the requirements for the respective Project components and thus the Project as a whole. Finally, the loading facilities provided specifically, one berth at 55 feet, one berth at 20 feet, and a 200-square foot loading platform, meets the applicable loading requirements.

I trust this letter is responsive to your request.

Sincerely, Matthew Le Grant
Matthew Le Grant
Zoning Administrator

Attachment – May 9, 2013 Letter from Giordano

File: Det Let re Dunbar Apts to Giordano 5-21-13

May 9, 2013

Mr. Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W.
Room 3102
Washington, D.C. 20024

Re: Request for Confirmation Regarding Zoning Compliance of Key Development
Data for Planned Addition to 2001 15th Street, N.W. (Lot 207, Square 204)

Dear Mr. LeGrant:

This letter is to request your confirmation that a planned addition to the Paul Laurence Dunbar Apartments complies with the Zoning Regulations. We understand that you are not conferring a zoning approval of the project at this time. We are merely requesting confirmation that certain key development parameters of the project as set forth in this letter and the attached Zoning Analysis exhibit and Site Plan (Exhibit "A") are consistent with the applicable R-5-D zoning standards.

As shown on Exhibit A, the Paul Laurence Dunbar project will consist of approximately 212,350 square feet of residential uses in an existing 128,650 square foot, 171-unit apartment building ("Existing Building") and a new addition consisting of 83,700 square feet in 95 additional units ("Addition") (collectively "Project"). The Project is being developed on record Lot 207 ("Property") which has an area of approximately 55,292 square feet.

The new Addition will connect to the Existing Building via a trellis consisting of horizontal beams spanning between the Additional and the Existing Building which beams will support perpendicular members that are spaced no greater than 24" apart and provide shelter and passage from doors to/from the Existing Building and the Addition.

The Property is zoned R-5-D which is a high density residential zone with a maximum permitted height of 90 feet, a maximum lot occupancy of seventy-five percent (75%), and a maximum FAR of 3.5 or a gross floor area of 193,552 square feet. The Property also has a rear yard requirement of 4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall but not

less than 12 feet. Pursuant to Section 404.2 of the Zoning Regulations for lots bounded on three sides by public streets, the rear yard may be measured from the center line of an abutting street. The Project-required rear yard of 28 feet 8 inches is met by measuring from the centerline of V Street, N.W. which is 80 feet wide.

The maximum height of the Addition is 85'10" with a penthouse on top of the roof which has a height of 15'9". The lot coverage for the Existing Building and Addition on the Subject Property is 43%. Pursuant to Section 404.2, the required rear yard of approximately 29 feet is more than satisfied when measured from the centerline of V Street, N.W. which is 80 feet wide.

Regarding parking, the Existing Building containing 171 units of senior housing is required to provide 1 space per each 6 units (per Section 2101) for a total of 29 units. The Addition will include 96 market rate units. The applicable parking requirement for the Addition is 1 space for each 3 units (per Section 2101) for a total requirement of 32 spaces. Together the Existing Building and the Addition have a parking requirement of 61 spaces which is provided in the Project.

Loading facilities are provided as required pursuant to Section 11-2201. One 55-foot berth, another at 20 feet and a 200 square foot loading platform is provided.

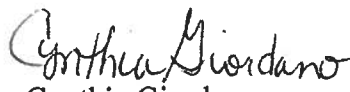
The 169 of the 171 units provided in the Existing Building will be required to be affordable pursuant to LHTIC and tax exempt financing obtained for the acquisition and renovation of the Existing Building. This amount of affordable residential gross floor area exceeds the eight percent set-aside requirements of the IZ provisions of the Zoning Regulations. We are awaiting finalization of an IZ exemption pursuant to Section 2602.3(f) and you have addressed the exemption previously so there is no need to address this issue again.

Again, your assistance in confirming that the Addition meets the basic matter-of-right R-5-D zoning standards with respect to height, FAR, lot coverage, rear yard, loading, and parking is all that is requested.

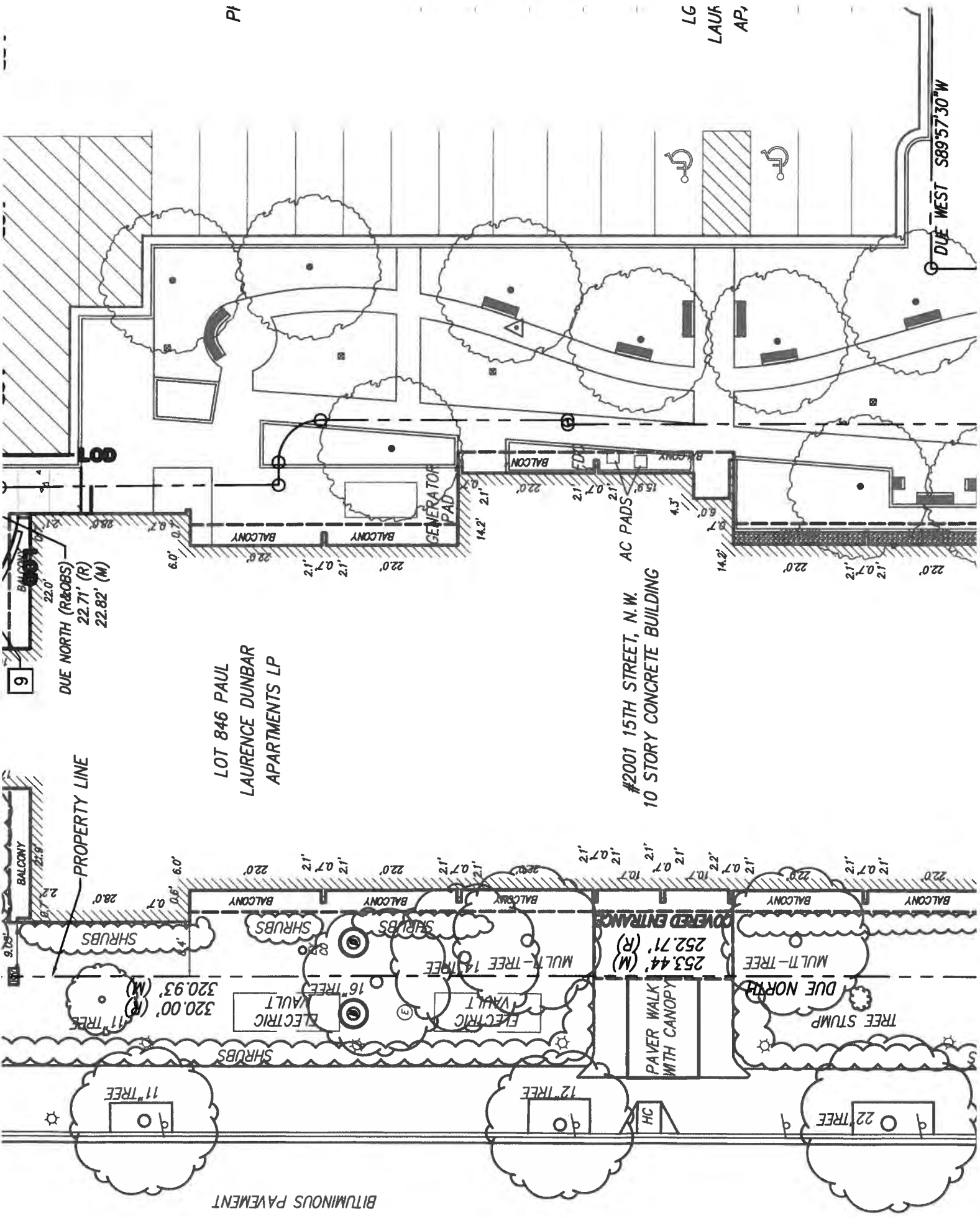
If you agree with our analysis, we would very much appreciate it if you would set forth your determination in a letter addressed to the undersigned. A draft is included herewith for your convenience.

Thank you in advance for your consideration.

Sincerely,


Cynthia Giordano

CG/jmd
Enclosures



JAIR LYNCH Development Partners
15th and V Streets NW - Zoning Analysis

1. Site Information	
Existing Building Address	2001 15th Street NW
Record Lot	207
Square	204
Lot Area	55,292
Zoning:	R5D
Located on through street or 3 sided lot	Yes
FAR (Base):	3.5
FAR (w/ Bonus):	4.2
Lot Coverage:	75%
Height	90'

2. Zoning Calculations					
FAR		Lot Coverage		Parking	
Record Lot Area	55,292	Lot Area	55,292	Parking Ratio Existing (elderly per unit)	0.167
Base FAR	3.5	Lot Coverage	75%	Existing Residential Units	171
Base Max GBA	193,522	Max Lot Coverage	41,469	Parking Req'd Existing Building	29
FAR w/ 20% Bonus Density from MIZ	4.2	Existing Building	13,348	Parking Ratio - Addition	0.333
Max GBA w/ Bonus Density	232,226	Available	28,121	Addition Units Proposed	95
Total Bonus Density Available	38,704			Parking Req'd Addition	32
Existing Building GBA	128,650			Parking Req'd for Record Lot	61
Density Available for New Development by FAR	103,576			Minimum Parking Provided	61
Loading		Rear Yard		Side Yard	
Apartment required loading	1 berth @ 55' deep	Required 4" per verticle foot		Required 3" per verticle foot	
Apartment required service / delivery space(s)	1 berth @ 20' deep	Identified front yard	U Street	Side yard provided:?	Yes
Apartment required loading platform area	1 @ 200 ft. ²	Identified rear yard	V Street	Building Height	86'
		V Street width	80'		
		Property line to center line	40'	Side yard required for 66'	21'-5"
		Building Height	86'	Side yard provided	25'-7"
Loading provided for record lot	1 berth @ 55' deep	Rear yard required for 86'	28'-6"		
	1 berth @ 20' deep	Rear yard provided	40'		
	1 @ 200 ft. ²				

3. Program Analysis - Existing Building and Planned Addition					
FAR		Lot Coverage		Parking	
Existing Building - Lot 848		Existing Building	12,865	Existing Building	29
Net Rentable Floor Area	95,247 74.0%	Addition	10,880	Addition	37
Common/Core Area	33,924 26.4%	Total Footprint	23,745		
Gross Floor Area	128,650 100.0%				
New Addition - Lot 847					
Net Sale/Rentable Floor Area	63,372 76.8%				
Common/Core Area	19,117 23.2%				
Gross Floor Area	82,489 100.0%				
Summary		Total Lot Coverage	0%	Total Parking Provided	0
Gross Floor Area - Existing Building	128,650 60.9%				
Gross Floor Area - New Addition	82,489 39.1%				
Total Gross Building Area	211,139 100.0%				

4. Inclusionary Zoning - Set Aside Calculations			
Net Bonus Density Used	13,235		
Affordable Set Aside by 50% of Bonus	6,617		
Affordable Set Aside by 8% of Net Total	12,690		
Affordable Set Aside Required	12,690		
Set Aside Provided with Exemption	SF	Units	
Existing Building - *	12,811	23	
New Addition	0	0	
Total Set Aside provided with Exemption	12,811	23	

* - 23 affordable units in the existing building meets the set aside requirement of 12,690 SF per the IZ requirements but the existing building actually contains 169 affordable units at 60% AMI per LHTIC & tax exempt bond financing along with a HUD backed mortgage in place for the next 30 to 40 years.

6. Unit Matrix - Existing Building						
Type	Total		Market		Affordable	
	#	Net Sf	#	Net Sf	#	Net Sf
1 Bedroom	171	557	2	557	169	557
Total/Average	171	557	2	557	169	557
	Net SF:	95,247	Net SF:	1,114	Net SF:	94,133

permanent highway plan] shall have the free right to the use and enjoyment of the same for the building or any other lawful purpose, and the free right to transfer the title thereof, until proceedings looking to the condemnation of such land shall have been authorized and actually begun.

Section 3202.2 of the Zoning Regulations thus provides an exception to the record lot requirement for land encumbered by a highway plan “until proceedings looking to the condemnation of such land shall have been authorized and actually begun.” D.C. Code § 7-114. The other two exceptions provided in § 3202.2 relating to the construction of two or more buildings on a single lot and mass transit system facilities are not applicable in the instant case.

Since the Zoning Regulations provide an exception to the record lot requirement for land encumbered by a highway plan, the Board concludes that it has jurisdiction over the highway plan and DPW referral issues presented in this appeal. When the Zoning Administrator invokes the highway plan exception to approve a building permit application involving an assessment and taxation lot, the Zoning Administrator must, in the absence of reliable information provided by the applicant,³ refer the application to DPW to determine whether condemnation proceedings have been authorized and actually begun. In the instant case, only DPW could have provided the information necessary to make a proper determination of the status of the property. Any condemnation proceedings or other measures to acquire the property through purchase or dedication would affect the lot lines. Without accurate information as to the location of the lot lines, a proper zoning review cannot take place. See, e.g., *Parr Warehouse Co. v. Peebles*, 108 A.2d 161 (D.C. 1954), a case involving a tract of land in Maryland where a requested zoning was approved on the condition that the property owner agree to dedicate a strip of property that was encumbered by a highway plan.

The Zoning Administrator’s decision to approve the issuance of the two building permits in question is therefore reversed. Following the issuance of this decision and order, the Zoning Administrator is to refer the permit applications to DPW, DOT for review and clearance. Upon clearance by DPW, DOT, the Zoning Administrator is to review the applications for compliance with the area restrictions of the Zoning Regulations, taking into account whether changes in the lot lines or the establishment of a building restriction line, if any, would affect zoning compliance. The Zoning Administrator’s review should also address the discrepancies that came to light during the hearing involving the gross floor area of the building and its siting on the lot.

The Accessory Building Issues

The Zoning Regulations define the term building as:

[A] structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel. When separated from the ground up

³ Under 11 DCMR § 3202.2(b)(3), in addition to an official building plat prepared by the Surveyor of the District of Columbia marked to show all existing and proposed structures and parking and loading spaces and facilities, the applicant must submit “[o]ther information necessary to determine compliance with the provisions of this title.”

or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.

11 DCMR § 199.1. An “accessory building” is defined as “a subordinate building located on the same lot as the main building, the use of which is incidental to the use of the main building.” *Id.*

The glass-covered walkway connection, constructed above grade and supported by walls and columns, provides sheltered access from a basement entry of the dwelling to the first floor of the garage addition. The walkway thus constitutes a “communication” between the dwelling and the garage addition, such that the dwelling and the addition are considered one building for purposes of zoning. As observed in *Goto v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 917, 927 n.1 (D.C. 1980), the word “communication” is typically used as an equivalent term for the word “access.” The Board thus concludes that the garage addition is not an accessory building. Since the garage addition is not an accessory building, it is not necessary to reach the appellants’ remaining arguments regarding accessory building area and use restrictions.

For the reasons stated above, it is hereby **ORDERED** that the appeal is **GRANTED IN PART** as to the necessity of prior referral to DPW for review and clearance for purposes of invoking the highway plan exception to the record lot requirement and **DENIED IN PART** as to whether the garage addition constitutes an accessory building. Pursuant to D.C. Code § 5-424(g)(4), the Zoning Administrator’s decision to approve Building Permits B426044 and B428648 is **REVERSED** for failure to refer the applications to DPW for review and clearance.

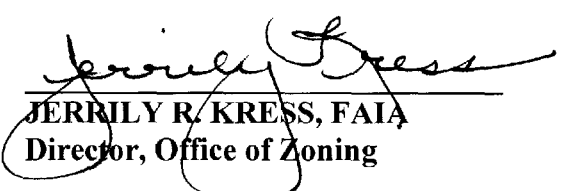
VOTE: 3 – 1 – 1 (Carol J. Mitten, Susan Morgan Hinton, Robert N. Sockwell, to grant the appeal as to the necessity of prior DPW review and clearance; Sheila Cross Reid, to deny; and Anne M. Renshaw, not voting, having been recused).

VOTE: 4 – 0 – 1 (Carol J. Mitten, Robert N. Sockwell, Sheila Cross Reid, and Susan Morgan Hinton, to deny the appeal as to whether the garage addition constitutes an accessory building; Anne M. Renshaw, not voting, having been recused).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 28 2001

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPEAL NO. 16646

As Director of the Office of Zoning, I hereby certify and attest that on **MAR 28 2001**, a copy of the foregoing Decision and Order in BZA Appeal No. 16646 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing concerning this matter and who is listed below:

Daniel Serwer
2701 Northampton Street, N.W.
Washington, D.C. 20015

James W. McBride
Baker, Donelson, Bearman & Caldwell
801 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20004

Michael D. Johnson, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Cynthia A. Giordano
Arnold & Porter
Thurman Arnold Building
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206

Joseph L. Bishop, Vice-Chair
Advisory Neighborhood Commission 3G
5601 Connecticut Avenue, N.W.
Washington, D.C. 20015

Z.C. ORDER NO. 06-27
Z.C. CASE NO. 06-27
PAGE 6

stakeholders throughout the planning and regulatory process, including the University's comprehensive neighborhood website (www.neighborhood.gwu.edu) and a Project-specific website (www.square54.com). (Ex. 4; Tr. Nov. 20, 2006 at 18-19.)

PUD Project

24. The proposed Project is a mixed-use development of residential, office, and retail uses that is intended to create an active transit-oriented environment adjacent to the Foggy Bottom-GWU Metrorail Station. The proposed Project consists of one building² but reads as separate and distinct components, and the design is shaped by both a consideration for the surrounding context as well as the intended mixed-use program for the subject site. The Project includes a 26,000-square-foot courtyard and a 60-foot-wide retail-oriented plaza along I Street, 333 to 336 residential units; approximately 436,000 square feet of office space; and approximately 84,000 square feet of at- and below-grade retail space, including space that will accommodate a grocery store of up to 42,000 square feet. (Ex. 4.)
25. As presented by the Applicant's architect and landscape designers (recognized as experts by the Commission) and set forth in the Applicant's submissions, the Project includes different uses, scales, and design elements that respond to the site's transitional context among institutional, residential, and commercial uses.
- a. The office component will front on Pennsylvania Avenue, Washington Circle, and 23rd and 22nd Streets. This component will be constructed of glass, steel, and masonry elements and will be radial in form, stepping down in height toward Washington Circle to respond to the unique character of the site. A glass atrium lobby will aid the transition of building heights between 114 feet, six inches feet at Pennsylvania Avenue and 90 feet at Washington Circle and will also provide a visual passageway through to the interior courtyard area. This link through the courtyard and lobby will animate and enhance the pedestrian pathway from the Foggy Bottom-GWU Metrorail Station to the office component. The office component will include a total gross floor area of approximately 436,000 square feet.
 - b. The residential component of the project will include two elements entered off a common lobby near the center of the block on I Street. The 110-foot height of the residential component will reinforce the existing and proposed neighboring residential and campus scales. The residential building elements will shape and enclose an internal residential garden area proposed for use by the residential tenants. The residential component will include ground floor retail uses, and, at the south-western portion of the block, the structure will be set back 60 feet from I Street.

² NCPC concluded that there were two buildings, but since neither exceeded permissible heights, no adverse impact on the federal interest was found. The Zoning Commission agrees with the Applicant that the above-ground connection that exists between the residential and office portions of the Project creates a single building.

- to create a retail-oriented pedestrian plaza. As with the office component of the project, the façade expression will be contemporary and sympathetic to the surrounding context. The residential component will include 333 to 336 apartments. (Ex. 4.)
- c. The retail program is a key element of the development plan, and the Applicant has worked closely with a team of retail consultants and brokers to ensure a vibrant retail experience on Square 54. The retail concept calls for approximately 84,000 square feet of ground-floor and below-grade retail space, including a combination of neighborhood-serving shops, restaurants, cafes, and a grocery store. The main entry to the grocery store will anchor the corner of 22nd and I Streets, although most of the store will be below-grade. It will be accessible by escalators and elevators as well as from the underground parking and loading facilities. Additional retail space will be located at street level along the perimeter of the site, with certain venues accessible through the interior courtyard. As mentioned above, a 60-foot-wide retail-oriented plaza along I Street will draw activity from the Metrorail station to help to anchor the I Street Retail Corridor concept set forth in the *Foggy Bottom Twenty Year Campus Plan (2007)*. (Ex. 4.)
26. The Project will be phased, as detailed in Condition 21 of the Order. As noted by the Applicant, construction of the first phase, with its sizeable infrastructure and associated costs, will make it necessary to proceed expeditiously with the second phase. (Tr. Jan. 4, 2007 at pp. 282-83.)
27. The Project includes underground parking for office workers, residents, and shoppers as well as approximately 362 spaces for use by the University. In total, the multi-story underground parking structure will accommodate approximately 1,026 parking spaces. The parking will be accessed from a single entrance located midblock along 22nd Street. Loading and service facilities will be self-contained beneath the Project as well, and will include three loading docks for 55-foot trucks and five docks for 30-foot trucks. The loading will also be accessed from a single entry located along 22nd Street, immediately to the south of the parking entrance. (Ex. 4.)
28. The center of the site will feature a landscaped interior courtyard of approximately 26,000 square feet. The building components that will surround the courtyard will be separated at critical locations to allow views and access into and out of the courtyard. These separations will also allow a greater amount of light and air into the space than a typical urban courtyard and will help to break the scale of the overall development into smaller elements that transition to the scale of the surrounding built environment. The northern portion of the courtyard will include a landscaped plaza area that can accommodate outdoor retail or dining venues for public use, and the residential garden to the south will provide a private common space for the apartment residents. The plaza area will be open during the day and be secured at night. Finally, streetscape

improvements around the perimeter of the site will include a variety of treatments and plantings that respond to the context of each street type, including the proposed 60-foot I Street retail plaza. (Ex. 4.)

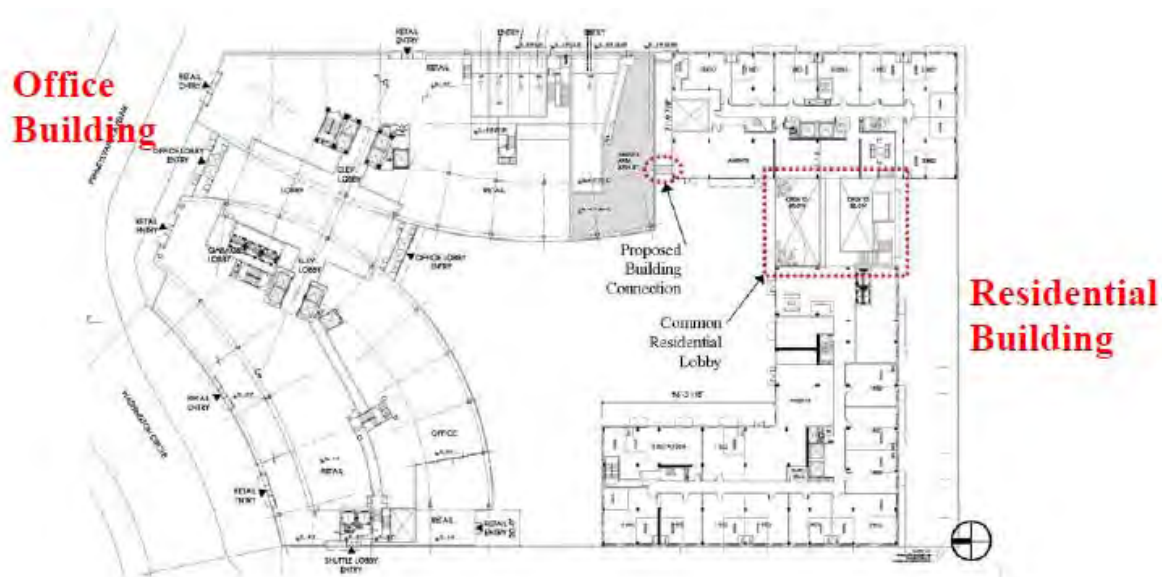
29. The building heights will vary from 90 feet to 114 feet, six inches within each component to respond to the surrounding context. Along Washington Circle and 23rd Street, the office component will rise to 90 feet, with an additional 24 feet, six inches of height set back 20 feet from the face of the building for a total height of 114 feet, six inches feet. Along Pennsylvania Avenue and 22nd Street, the office component will rise to a height of 114 feet, six inches. The residential component will have a height of 110 feet.
30. The total gross floor area included in the proposed PUD is approximately 834,610 square feet for a total density of approximately 7.5 FAR. The proposed Project will have a lot occupancy of 77 percent. (Ex. 4.)

Zoning Map Amendment

31. The Property is located in the R-5-D Zone District. The maximum height allowed in the R-5-D Zone District is 90 feet, and the maximum density is 3.5 FAR. The zones surrounding the Property permit a mix of development. Immediately to the east and northeast along K Street and Pennsylvania Avenue is land in the C-3-C Zone District. Properties zoned C-3-C north of Pennsylvania Avenue are also located in the New Downtown TDR Receiving Zone, which permits buildings along K Street to reach heights of 130 feet through the purchase of transferable development rights. To the north and northwest are properties located in the R-5-E Zone District. To the west, south, and southeast are properties located in the R-5-D Zone District, including properties within the Foggy Bottom campus plan boundaries. Recently, in Z.C. Case No. 06-12, the Commission approved a Zoning Map amendment for certain adjacent and nearby sites in Squares 55, 75, and 77 to the C-3-C Zone District as part of the first-stage PUD for the Foggy Bottom campus. The Commission also approved a map amendment for a nearby site in Square 79 to the C-4 District as part of the first-stage PUD.
32. The Applicant requested a PUD-related Zoning Map amendment for the Property to the C-3-C Zone District to allow the retail and office uses and to permit the structures to reach the requested height and density. The maximum building height permitted in the C-3-C Zone District under the PUD guidelines is 130 feet, and the maximum density permitted is 8.0 FAR. It is necessary to rezone the Property to C-3-C in order to allow for the office and retail uses and to allow the Project to achieve the requested height and density.

PUD Evaluation Standards

33. The Applicant requested approval to construct a building to a height of 114 feet, six inches and density of approximately 7.5 FAR, which are within the PUD standards set



630 HEIGHT OF BUILDINGS OR STRUCTURES (CR)

- 630.1 Except as provided in this section, the height of buildings and structures shall not exceed ninety feet (90 ft.).
- 630.2 Free-standing, primarily ground-supported signs shall not exceed twenty feet (20 ft.) in height.
- 630.3 Spires, towers, domes, pinnacles or minarets serving as architectural embellishments, penthouses over elevator shafts, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this sections otherwise authorizes. This section shall not be interpreted to bypass otherwise required special exception reviews.
- 630.4 If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:
- (a) It shall meet the requirements of § 411;
 - (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; and
 - (c) It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.
- 630.5 Housing for mechanical equipment or a stairway or elevator penthouse may be erected to a height in excess of that authorized in the district in which located.
- 630.6 A public recreation and community center shall not exceed a height of forty-five (45) feet.

SOURCE: §§ 4503.1 through 4503.5 of the Zoning Regulations, effective May 12, 1958; as amended by: Final Rulemaking published at 33 DCR 3975, 3977 (July 4, 1986); Final Rulemaking published at 35 DCR 179, 192 (January 8, 1988); and Final Rulemaking published at 47 DCR 974143 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8385 (October 20, 2000); as amended by Final Rulemaking published at 50 DCR 10137 (November 28, 2003); as amended by Final Rulemaking published at 55 DCR 34 (January 4, 2008).

633 REQUIRED PUBLIC SPACE AT GROUND LEVEL (CR)

- 633.1 An area equivalent to ten percent (10%) of the total lot area shall be provided for all new development.
- 633.2 The area for new development shall be located immediately adjacent to the main entrance to the principal building or structure on the lot, and shall serve as a transitional space between the street or pedestrian right-of-way and the building or structure.
- 633.3 The area for new development shall be open to the sky or have a minimum vertical clearance of one (1) story or ten feet (10 ft.).
- 633.4 The area shall be suitably lighted and landscaped for public use, and may be utilized for temporary commercial displays.
- 633.5 The space shall be open and available to the general public on a continuous basis.
- 633.6 The area shall not be charged against the gross floor area of the building.

SOURCE: § 4506.1 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8386 (October 20, 2000).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17794 of NH Street Partners Holdings LLC, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under section 631, and a variance from the required ground level public space requirements under section 633, to permit the renovation and expansion of an existing office building with ground floor retail in the CR District at premises 1200 New Hampshire Avenue, N.W. (Square 70, Lot 195).

HEARING DATE: July 29, 2008
DECISION DATE: July 29, 2008 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 2A and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 2A, which is automatically a party to this application. ANC 2A did not participate in this application. The Office of Planning submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variances pursuant to §§ 3103.2. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the Office of Planning report filed in this case, the Board concludes that in seeking variances from § 631 and § 633, the applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

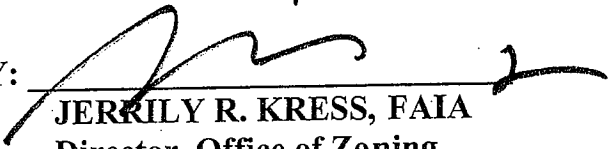
Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit No. 22 - Plans) be **GRANTED**.

VOTE: **5-0-0** (Ruthanne G. Miller, Shane L. Dettman, Marc D. Loud,
Mary Oates Walker, Curtis L. Etherly, Jr. to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: AUG 01 2008

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING

BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17794

As Director of the Office of Zoning, I hereby certify and attest that on **AUGUST 1, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Christine Moseley Shiker, Esq.
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M. Betancourt, Vice President
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Chairperson
Advisory Neighborhood Commission 2A
725 24th Street, N.W.
Washington, D.C. 20037

Single Member District Commissioner 2A02
Advisory Neighborhood Commission 2A
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Matthew LeGrant
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Jack Evans, City Councilmember
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Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
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Washington, D.C. 20002

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17794-A of NH Street Partners Holdings LLC, pursuant to 11 DCMR § 3129, for a modification to approved plans and, pursuant to 11 DCMR § 3129.3, a waiver of the two-year time period for filing a motion for modification of approved plans. The original application was approved on July 29, 2008, pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 633, to permit the renovation and expansion of an existing office building with ground floor retail in the CR District at premises 1200 New Hampshire Avenue, N.W. (Square 70, Lot 195).

HEARING DATES (Orig. Application):	July 29, 2008
DECISION DATE (Orig. Application):	July 29, 2008 (Bench Decision)
ORDER 17794 ISSUANCE DATE:	August 1, 2008
DECISION DATE ON MOTIONS TO APPROVE MODIFICATION OF APPROVED PLANS AND WAIVER OF TIME FOR FILING:	April 12, 2011

SUMMARY ORDER

Background

On July 29, 2008, the Board of Zoning Adjustment ("Board" or "BZA") voted to approve Application No. 17794, filed pursuant to 11 DCMR § 3103.2, for a variance from the floor area ratio requirements under § 633, to permit the renovation and expansion of an existing office building with ground floor retail in the CR District at premises 1200 New Hampshire Avenue, N.W. (Square 70, Lot 195). BZA Order No. 17794 approving the application was issued on August 1, 2008. (Exhibit 25.)

The Applicant submitted its building permit application on July 26, 2010, prior to the expiration of Order No. 17794 on August 1, 2010. The Applicant indicated that the building permit application has been reviewed and approved by the Zoning Division for the Department of Consumer and Regulatory Affairs ("DCRA") but is still pending with DCRA for final approval and issuance. (Exhibit 29.)

Motions for Minor Modification of Plans and Waiver of Deadline for Filing Motion

BZA APPLICATION NO. 17794-A
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On March 22, 2011, the Applicant filed a motion for minor modification of the approved plans in BZA Order No. 17794, pursuant to 11 DCMR § 3129. The record indicates that the request for modification was served on the parties to the case. Sufficient notice of this motion for minor modification of plans was provided to the Office of Planning (“OP”) and Advisory Neighborhood Commission (“ANC”) 2A, the affected ANC. (Exhibit 29.)

The Applicant has requested minor modifications to the project plans to finalize the design and complete the interior renovations. The Applicant's proposed modifications include: (1) a slight increase in gross floor area (340.5 square feet), resulting from the infill of internal open space between the fourth and fifth floors, which was not included in the original proposal, and (2) an increase in public space at the ground floor (1,040 square feet in total), slightly reducing the need for previously granted relief from the requirements of § 633 of the Zoning Regulations.

The Applicant also requested a waiver of the two-year filing deadline for minor modification to plans. Subsection 3129.3 of the Zoning Regulations requires a request for minor modification of plans to be filed with the Board no later than two years after the date of the final order approving the application. Here, the Applicant asked for a waiver of this requirement, because when the application was originally approved in the summer of 2008, shortly thereafter there was a significant downturn in the real estate market and economic conditions resulting in the project not being able to proceed at that time. Then, in early 2010, as economic conditions slightly improved, the project started to move forward and construction plans were prepared and submitted in accordance with the requirements of Order No. 17794. The Applicant indicated that only after the building permit application was submitted and the expiration of the two-year period occurred did the Applicant become aware of the impact of the interior renovations planned for the fourth and fifth floor to the overall project. (Exhibit 29.)

The record indicates that the Applicant presented this request for a minor modification to ANC 2A at its regularly scheduled public meeting on March 16, 2011. According to the Applicant, ANC 2A had no objection to the request, but took no formal action as a quorum was not present. Consequently, the affected ANC 2A, which was a party to the underlying case, and thus was required to be served with any modification request to which it was a party, did not submit a report or respond to the motion. (See, Exhibit 29.)

The Office of Planning (“OP”) submitted a timely report indicating that it supports the proposed modifications and also does not object to the requested waiver from the requirements of § 3129.3 of the Zoning Regulations. (Exhibit 30.)

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for modifications of approved plans. Section 3129.6 of the Zoning Regulations authorizes the Board to grant, without a hearing, requests for minor modifications of approved plans that do not change the material facts upon which the Board based its original approval of the application. (11 DCMR § 3129.6.)

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Based upon the record before the Board and having given great weight to the OP report¹ filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR § 3104, specifically that approval of the proposed modifications will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

No requests for party status were received. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board finds no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application. Finally, the Board concludes that the Applicant's inability to start the project due to economic and market conditions beyond the Applicant's reasonable control, and its only recently learning of the impact of the interior renovations planned for the fourth and fifth floor to the overall project constitute "good cause" sufficient for it to waive the time period requirement for filing a motion for modification of approved plans pursuant to § 3129.3. Based upon the record, the Board finds that the Applicant has met the criteria set forth in § 3130.6.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application for modification of approved plans, as shown in Exhibit 29, Tab 3 – Modified Plans, and for a waiver of the two-year deadline in which to make the motion for modification, is **GRANTED**. In all other respects Order No. 17794 and the plans approved therein remain unchanged.

VOTE: 3-0-2 (Nicole C. Sorg, Jeffrey L. Hinkle, and Meridith H. Moldenhauer to Approve. No other Board members participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

The majority of the Board members approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: APR 21 2011

¹ As to the affected ANC, since it took no position, there was nothing to which to give great weight.

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PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17794-A

As Director of the Office of Zoning, I hereby certify and attest that on APR 21 2011, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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ATTESTED BY:


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