

EXHIBIT E

From: [Avitabile, David](#)
To: ["Ndaw, Mamadou \(DCRA\)"](#)
Cc: [Epting, John](#); ["Ilan Scharfstein"](#)
Subject: FW: 2121 M Street -- Review of our discussion
Date: Sunday, November 10, 2013 12:37:21 PM
Attachments: [Roof Terrace Sketch.pdf](#)
[Sq 70 Comp Sheets.PDF](#)
[Determination Ltr re 2109 M St to Epting 12-6-2010.pdf](#)

Mamadou,

Our email to Matt summarizing our review of the zoning compliance of the Project.

- Dave

David M. Avitabile

Associate

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goulston&storrs

From: Avitabile, David
Sent: Monday, August 26, 2013 6:36 PM
To: 'LeGrant, Matt (DCRA)'
Cc: 'Ilan Scharfstein'; Epting, John
Subject: 2121 M Street -- Review of our discussion

Matt,

Thank you for meeting with us to review the current development plans for 2121 M Street NW and confirm (or in some cases, reconfirm) the application of the Zoning Regulations. The property is located in Square 70, Lot 880 (part of record lot 190) ("Property") in the CR Zone District. We propose to construct a hotel with 168 rooms, some ground floor retail and function room spaces, and 34 parking spaces, as shown on the attached plans ("Project").

The following email summarizes our discussion for your confirmation. We have also included a revised roof plan, as discussed below.

Lot:

- Our property is located on the same single record lot as the Washington Marriott and some ground floor retail establishments. Our Project will be connected to the other structures on the record lot through (a) the Marriott's hotel stair tower, which will exit into a vestibule within our building before discharging people out to M Street and (b) through doors at the rear of the retail spaces that provide access through and across a corridor on our parcel to the rear loading area and private alley. These connections are at street level

and are therefore at or above the main floor of the structures. Accordingly, you confirmed the structures will constitute one building for zoning purposes.

Height:

- We will use the same measuring point as the Washington Marriott, which according to the Marriott's Comp Sheet (attached) was on M Street NW.
- Our Project will be constructed to a maximum height of 90 feet as measured to the top of the roof and excluding our parapet, which will be less than three feet in height.
- Accordingly, you agreed that the Project complies with height requirements of the Zoning Regulations.

Density:

- Pursuant to your prior determination letters (including most recently the letter dated December 6, 2010 and attached to this email), approximately 120,639.91 square feet of density remains available on the lot. Our Project contains 110,173 square feet of gross floor area.
- We have concluded that, of the total amount of available remaining density, only 8,459 square feet remains available for nonresidential uses. As indicated on the plans and development summary, only 7,041 square feet of gross floor area within the Project will be devoted to the nonresidential components of a hotel use. The balance is devoted to guest rooms and service areas, which constitute residential uses under Section 631.2 of the Zoning Regulations.
- Accordingly, you confirmed that the Project conforms to the density limitations of the Zoning Regulations.

Public Space at Ground Level:

- As we discussed, the public space requirement was adopted in 1974 as a part of the text and map amendments that created the CR Zone District. See Z.C. Order No. 108 at 26. Therefore, the public space requirement applied to the property when the Marriott was constructed in 1978.
- According to Section 633.1, the public space requirement is based on the total lot area. Since the public space requirement is assessed based on total lot area, the public space requirement for the entire record lot must have been satisfied in 1978 with the initial construction of the Marriott. Subsequent construction on the property does not expand or increase the requirement.
- The Comp Sheet does not indicate how the public space requirement was met, but based on the issuance of the building permit and subsequent CO for the Marriott, we agreed that the requirement must have been met at that time by the Marriott. The issuance of permits and COs for an addition to the Marriott in 1988 as well as for the Walgreens and other retail within the last decade provide further evidence that the District has repeatedly affirmed the property has met the public space requirement.
- Accordingly, you agreed that the requirement for public space at ground level has been met, and no further public space at ground level is required for the Project.

Lot Occupancy:

- The Zoning Regulations permit a lot occupancy of 100% for nonresidential uses; for purposes of lot occupancy, hotel use is considered to be a nonresidential use under Section 634.3 of the Zoning Regulations. The uses on the lot consist entirely of hotel and retail uses; that is, non-residential uses under Section 634. Upon completion of our Project, all improvements on the underlying record lot will occupy 90.3% of the lot. Accordingly, you agreed that the lot will continue to conform with the lot occupancy requirements upon completion of the Project.

Rear Yard:

- Pursuant to Section 636.5, no rear yard is required for a corner lot abutting three or more streets. The lot fronts on three streets – M Street, 22nd Street, and Ward Place. The Comp Sheet confirms that no rear yard was required for the Marriott. According, as an addition to an existing single building for zoning purposes that fronts on three streets, you agreed that no rear yard is required for the Project.

Courts:

- The CR District requires that hotels provide courts with a width of 2.5 inches per foot of height, and, for closed courts, an area that is twice the square of the required court width.
- Pursuant to your prior determination letter, you concluded that the Project would create two courts – one closed court on the west side of our Project, and one open court on the east side of our Project.
- As we discussed, the closed court has a height of 76'9", width of 33' 0 3/4", and area of 4,69 square feet. Accordingly, you affirmed that this court complies with the Zoning Regulations.
- As we discussed, the open court is a part of a "chain of courts" extending to Ward Place and it is therefore an open court. We also discussed that the open court actually consists of two contiguous open courts: the loading area and private alley, which has a height of 89'6" and width of 22' 3 7/8"; and the court above the first floor, which has a height of 76'9" and width of 16' 3 3/8". Accordingly, you confirmed that both open courts comply with the open court requirements of the Zoning Regulations.

Parking:

- A hotel in the CR District requires one parking space per 4 rooms and one parking space per each 300 square feet in the largest function room or exhibit space. The Project contains 168 rooms and a 1,710 square-foot function space, for a total parking requirement of 48 spaces.
- As we discussed, the existing Marriott hotel has more parking than is required under the Zoning Regulations. 32 spaces were required and 140 were provided, for a surplus of 108 parking spaces.
- Pursuant to your prior determination letter, you concluded that the Project could meet its parking requirement by using excess parking at the Marriott, because it is still within the single record lot. As we discussed, our Project will have a total parking requirement of 48 spaces, which will be satisfied for zoning purposes with 34 parking spaces within the Project and the remaining 14 spaces within the Marriott garage. Accordingly, you agreed that the Project complies with the parking requirements

Loading:

- As we discussed, the Project triggers a loading requirement for one 30-foot deep berth, one 100 square foot platform and one 20-foot deep delivery space. This loading may be located anywhere on the record lot and will be provided as shown on the proposed plans.

Roof Structure

- As we discussed, the proposed Project contains a roof structure that is set back from all exterior walls (that is, the south wall that faces M Street and the north wall that faces the open court). No setback is required from the east wall, which is a lot line wall that abuts another 90-foot tall building, or from the west wall, which faces a closed court within the single record lot.
- Pursuant to our discussion, we have modified the roof structure to reduce the amount of accessory space within the structure and clarify that the enclosed space is intended to be used for uses that are accessory to the rooftop recreation space, as shown on the attached plan. Please confirm that the revised roof plan is acceptable.

Thank you very much for your time and attention to this matter; we hope that it will help expedite the permit review of this “matter of right” project.

Best,
Dave

Pursuant to IRS Circular 230, please be advised that, to the extent this communication contains any tax advice, it is not intended to be, was not written to be and cannot be used by any taxpayer for the purpose of avoiding penalties under U.S. federal tax law.

David M. Avitabile

Associate

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LI-2-3
5/1/58

DISTRICT OF COLUMBIA GOVERNMENT
DEPARTMENT OF LICENSES AND INSPECTIONS
ZONING DIVISION

ZA-78-
FILE NO....663....

ZONING COMPUTATION SHEET - COMMERCIAL USE

1. Owner MR. U.G. AUGER		2. Location 1221-22 ND ST, N.W.		3. Square 70	
4. Lot 187		5. Zone CR		6. Use of Building or Structure HOTEL	
				7. New ☒ Addition to Alter existing	
8. Type of Structure Conforming Nonconforming		9. Use of Structure Conforming ☒ Nonconforming		10. Width of Adjacent Streets, 22 ND ST. - 90' M ST. - 90' WARD PL. - 50'	
				11. Width of Adjacent Alleys PUBLIC ALLEY-30'	
12. Width of Restriction Lines None		13. Application of Act of June 1, 1910 Height of Bldg. - 110' Excess Height - None		14. Type of Lot Corner ☒ Through ☒ Triangular ☐ Alley ☐ Interior ☐	
				15. Number of Dwelling Units HOTEL ROOMS 354	
16. Lot Area Required - NP 59,291.95 Provided -		17. Lot Occupancy No Allowed - LIMIT Provided - 54,918.26		18. Gross Floor Area Total 213,864.42 204,160.77 F.A.R. = 4,703.65	
				19. Cellar Area Total 81,616.05	
				20. Floor Area Ratio G.O. = 355,751.7 Allowed - 213,864.42 Provided - 204,160.77	
21. Number of Residential Parking Spaces MAX HOTEL SPACES = 89 Required - NONE Provided - 89 Open Area - None Within Bldg. -		22. Number of Commercial Parking Spaces Required - Provided - Open Area - Within Bldg. -		23. Number of Loading Berths Required - 2 MAX = 4 SERVICE SPACE REQ = 6 Provided - 2 LOAD BERTHS 6 SERVICE SPACES	
24. Height of Bldg. Curb, to first floor - 90' - 1.7' to high point of roof - 90' Grade, to first floor - .85' to ceiling top story - 90.85' to high point of roof - 107.52'		25. Number of Stories Allowed - NP. Provided - 9 Basement - None Cellar - 3 PENTHOUSE - ☒		26. Required Provided Rear Yard Depth - None - None Side Yard Width - None - None Open Court Width - 16.3 - 46.5' Closed Court Width - 14.47 - 301.42 Closed Court Area - None - None	

REMARKS:

(PENTHOUSE)

REFERENCE ELEVATION -

T.C. = 57.2' 1ST FL. = 55.5'
MIDDLE OF LOT ON 'M' ST.

~~BED ON EXCESS PARKING~~

COMPLIES WITH REQUIREMENT.

FEB 2 1979 DE ZONING REGULATIONS

PENTHOUSE = .37 = 21,938.02
F.A.R.
PROVIDED = 9,703.65
HEIGHT = 17.52'

~~TOPO FROM HIGHWAY~~ (SUBMITTED 7/18/78)

~~PLANS TO M.P.O. ON POOF STRUCTURES~~ - Will submit on 12-14-78 to Zoning

TRIED TO REACH MR. GITLIN ON ^{EXCESS} PARKING 9/14/78. ARCHITECT CONTACTED -
(840-9700) Changes made 9/15/78 - R Smith 9/15/78

Open Courts widths

2 1/2" / ft. of ht.

① Court above function room -
Req. = 16.3' Provided = 46.5'

② Small court
Req. = 6' Provided = 8'

③ Total open court (above public
space & existing restaurant)
Req. = 14.47' PROVIDED = 301.42

~~TOPO FROM HIGHWAY - (SUBMITTED 11/10/78)~~

~~PLANS TO M.P.O. ON ROOF STRUCTURES - Will submit on 12-14-78 to Zoning~~

TRIED TO REACH MR. GITLIN ON ^{EXCESS} PARKING 9/14/78. ARCHITECT CONTACTED -
(840-9700) Changes made 9/15/78 - R. Smith 9/15/78

ZONING COMPUTATION SHEET - COMMERCIAL USE

1. Owner Ulysses L. Lulu H. Anger		2. Location 1221, 22 nd St NW		3. Square 70
4. Lot 190	5. Zone CR	6. Use of Building or Structure Hotel		7. New Addition to ☒ Alter existing ☐
8. Type of Structure Conforming ☒ Nonconforming ☐	9. Use of Structure Conforming ☒ Nonconforming ☐	10. Width of Adjacent Streets, 22 nd St 90' Hard pl 50' M St 90'		11. Width of Adjacent Alleys None
12. Width of Restriction Lines None	13. Application of Act of June 1, 1910 Height of Bldg. 110' Excess Height -		14. Type of Lot Corner ☒ Triangular ☐ Interior ☐	15. Number of Dwell. Units Existing 350 Allowed 71
16. Lot Area Required <u>NP</u> Provided 64445.98 sq ft	17. Lot Occupancy Allowed <u>NP</u> Provided -	18. Gross Floor Area Total Exist 222074.30 Add 37988.57 260059.87 sq ft	19. Cellar Area Total 81616.05 sq ft (Existing)	20. Floor Area Rat (6.0) 362487.78 Allowed - 260059.87 sq ft Provided -
21. Number of Residential Parking Spaces Required <u>18</u> Provided - Open Area - Within Bldg. -		22. Number of Commercial Parking Spaces Additional Required <u>18</u> Provided <u>18</u> (Total of 107 Spaces) Open Area - Within Bldg. ☒		23. Number of Loading Berths Required - Provided <u>existing</u>
24. Height of Bldg. Allowed <u>90'</u> Curb, to first floor <u>0.8'</u> to high point of roof <u>90'</u> Grade, to first floor <u>91.65'</u> to ceiling top story - to high point of roof -		25. Number of Stories Allowed <u>NL</u> Provided <u>9</u> Basement - Cellar <u>3 (Existing)</u>		26. Required Provided Rear Yard Depth <u>None</u> Side Yard Width - Open Court Width - Closed Court Width - Closed Court Area -

REMARKS: * M St. ref. for ht 57.2'

gulf. the architect on 8/1/88
at 9:15 AM. Mr. Lee that he
was ready for signing of the
zoning office.

Allowable FAR
(6.0) → 386675.85 sq ft
(-) Appraised to lot 188 → 24188.10
362487.78 sq ft

COMPLIES WITH REQUIREMENTS
OF ZONING REGULATIONS
8/11/88

Architect
GTR Silvia Maynard
229-9300

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



December 6, 2010

John Epting, Esq.
Goulston & Storrs, PC
2001 K Street NW, 11th Floor
Washington, DC 20006

**Re: Zoning Determination Letter
 2109 M Street NW – Square 70, Lot 880 (part of record lot 190)**

Dear Mr. Epting:

You have asked for a determination letter regarding a series of zoning issues related to property located at 2109 M Street NW (Square 70, Lot 880) (“Property”). It is my understanding that you plan to construct a new apartment building on the Property containing approximately 160 units (“Project”). The ground floor of the building will contain the residential lobby entrance as well as a club that provides various amenities (food, beverage, fitness center, etc) to both residents of the building as well as club members who are not residents. Concept test fit plans depicting the proposed Project are included in Exhibit A.

Based on my review of the zoning history of the Property, I have determined that the proposed Project fully complies with the following requirements of the Zoning Regulations:

- Section 631: Permitted Floor Area Ratio in the CR Zone, including the related definition of “building” set forth in Section 199.
- Section 634: Permitted Lot Occupancy in the CR Zone, including the related definition of “lot” set forth in Section 199 and the status of the ground-floor club as a nonresidential use under Section 634.
- Section 638: Court requirements in the CR Zone, including the related definitions of courts set forth in Section 199
- Chapter 21: Parking requirements for the existing improvements to the Record Lot and proposed Project
- Chapter 22: Loading requirements for the existing improvements to the Record Lot and proposed Project.

Below is a summary of the zoning and development history for the Property, followed by a detailed analysis of each zoning feature.

I. History

The Property contains approximately 18,212 s.f. of land area and is currently improved with a surface parking lot. Prior to 2006, the Property contained a one-story retail/service establishment known as Lulu's Club Mardi Gras that occupied the entire lot.

The Property is part of a single lot development based on record lot 190 ("Record Lot"). The Record Lot is currently improved with the surface parking lot on the Property, as well as a Marriott hotel, Walgreens drug store, and Starbucks coffee shop. A private alley runs along the eastern end of the Record Lot. A plat depicting the existing improvements on the Record Lot is attached as Exhibit B.

Based on information included on the Zoning Computation sheets prepared by prior Zoning Administrators (attached as Exhibit C) as well as information you provided, the development history of the Property is set forth below:

- Pre-1958: improvements included a one-story restaurant on the Property (Lulu's) and a one-story restaurant on the Record Lot (Blackie's House of Beef).
- 1978: new hotel containing 354 rooms constructed on Record Lot
- 1990: addition to hotel containing 71 rooms constructed
- 2006: addition to hotel containing 56 rooms constructed. Blackie's converted to use as Walgreens and Starbucks.
- 2006: Lulu's demolished and converted to surface parking lot

The Record Lot, including the Property, is zoned CR and is located in the Dupont Circle Overlay District.

II. Permitted Density

In the CR zone district, the maximum permitted FAR is 6.0 (of which up to 3.0 may be for non-residential uses). Section 631.3 of the Zoning Regulations permits the allowable residential and non-residential density to be apportioned between several record lots in the same square in the CR zone.

A series of recorded covenants apportioned the allowable density between Lot 190 and other lots in Square 70. Pursuant to my prior ruling dated February 13, 2009 and attached as Exhibit D, Lot 190 has 120,639.91 square feet available for future development on the Record Lot. Of that amount, up to 18,212 square feet may be for non-residential uses.

Under the Zoning Regulations, only one building is permitted on a record lot. Furthermore, in order to construct the Project described above, and utilize the density available to the Record Lot, the Project must be constructed as an addition to the existing improvements, such that the entire set of improvements on the Record Lot constitute one “building” as defined under the Zoning Regulations.

Under the definition of “building” in Section 199.1 of the Regulations, the existence of communication at or above the main floor unifies the separate portions of a structure into a single building. Here, the “main floor” of the Record Lot is its ground floor, and, as shown on the ground floor plan included in Exhibit A, you have indicated that meaningful communication between the existing improvements and the Project will be constructed as a part of the Project.

Accordingly, the proposed Project is an addition that is part of a “single building” that may utilize the density available on the Record Lot.

III. Lot Occupancy

Under Section 634.1, the maximum lot occupancy for a structure devoted to residential use is 75%. Percentage of lot occupancy is defined in Section 199 as a figure that expresses that portion of a **lot** lying within lot lines and building lines that is occupied by building area. Section 199 further states that a “lot” may or may not be a record lot.

Here, you have proposed evaluating whether the Project complies with the lot occupancy requirements based on its relationship to Lot 880, an assessment and taxation lot (i.e. the Property), rather than based on its relationship to Lot 190, the underlying Record Lot. I conclude that calculation of the percentage of lot occupancy based on an assessment and taxation lot is permissible under the Zoning Regulations, which explicitly provide that a “lot” need not be a record lot.

I further conclude, based on the same rationale, that the use of an assessment and taxation lot to determine compliance with the lot occupancy requirement does not preclude the use of an underlying record lot to determine compliance with other requirements of the Zoning Regulations. Nothing in the Regulations states that the “lot” used for evaluating compliance with one portion of the Regulations need be the same as the “lot” used for evaluating compliance with another portion of the Regulations.

Under Section 634.2, the percentage of lot occupancy is calculated on a horizontal plane located at the lowest level where residential uses begin. Under Section 634.3, “residential uses” includes “multiple dwellings.”

Here, you have proposed treating the ground floor of the Project as a nonresidential use for purposes of lot occupancy. As discussed above, the ground floor of the Project will contain the residential lobby entrance as well as amenity space that provides food, beverage, access to a fitness center, and social gathering space available to both residents of the Project as well as club members who are not residents.

Under longstanding interpretations of the Zoning Regulations, the presence of a residential building entrance, by itself, does not trigger the percentage of lot occupancy requirements at the ground level of a building. Such entrances typically include a lobby, offices for building management as well as the leasing offices, and back of house space for loading and service, and may also include amenity spaces for the residents such as business centers, fitness centers, or gathering spaces. I conclude that these uses are not “residential uses” for purposes of Section 634; rather, they are permitted nonresidential uses that are accessory to the residential dwelling units above. Therefore, so long as no dwelling units are located on the ground floor of a multiple dwelling unit, and the amenity space is made available to both residents of the Project as well as club members who are non-residents, the ground floor is not “residential” for purposes of Section 634. In support of this conclusion, I note that such accessory uses are not listed as a “residential use” under Section 634.3.

Accordingly, the ground floor uses in the Project are not “residential uses” for purposes of calculating lot occupancy, and a lot occupancy of up to 100% is permitted for the ground floor of the Project.

IV. Courts

Courts are not required in the CR Zone District. Under Section 638 of the Regulations, if an open court is provided for residential use, its width must be three inches (3 in.) per foot of court height, but not less than 10 feet wide. If a closed court is provided for residential use, its width must be four inches (4 in.) per foot of court height, but not less than 15 feet, and the area of the court must be twice the square of the required width. Section 199 of the Regulations defines a closed court as a court surrounded on all sides by the exterior walls of a building and side or rear lot lines, or by alley lines when the alley is less than 10 feet wide. Any court that is not a closed court is an open court. The Regulations define an open court as a court that opens onto a street, yard or alley not less than 10 feet wide.

According to the 1978 Comp Sheet and attachments thereto, the open area on the Record Lot above the Property and the adjacent private alley were historically considered to be one open court.¹ As shown on the test fit drawings attached as Exhibit A, the proposed Project will narrow this open court but continue to maintain it as one continuous open space along the east side of the Record Lot.

Accordingly, I conclude that this court will continue to meet the definition of “open court” under the Zoning Regulations. For purposes of calculating the required open court width, the court should be segmented into two separate pieces – one being the volume beginning at the ground level that roughly corresponds with the private alley, and the other being the volume that begins above the ground floor of the Project. Since the width of the latter volume is irregular, it may be calculated based on the diameter of the largest circle that may be inscribed in a horizontal plane within the court. The required width of this court shall be based on the height of the court.

¹ At the time of construction in 1978, this open court was located, in part, above the one-story Lulu’s establishment.

As shown on the test fit drawings attached as Exhibit A, a second court will be created in the center of the Record Lot, to the west of the Project. This court is surrounded on all sides by the Project and other improvements on the Record Lot and, therefore, is a closed court, because it is surrounded on all sides by the exterior walls of the “building” (meaning, the single building for zoning purposes created on the Record Lot). Again, the required width and area of the court shall be based on the height of the court.

V. Parking

According to the Comp Sheet, in 1978, the uses on the Record Lot did not require any parking.² The 1990 addition of 71 hotel rooms established a requirement for 18 parking spaces, and the 2006 addition of 56 hotel rooms triggered a requirement of 14 additional parking spaces.³ Therefore, the existing improvements on the Record Lot require a total of 32 parking spaces.

The improvements associated with the hotel include an underground parking structure containing 140 parking spaces. Since the existing uses have a parking requirement of 32 spaces, the Record Lot complies with the parking requirements of the Zoning Regulations, and currently contains an excess of 108 parking spaces. This parking is located on the Record Lot, but not on the Property.

The proposed Project contains 160 residential units, which triggers a requirement for 54 additional parking spaces. You have proposed the use of the excess parking spaces in the hotel garage towards the parking requirement for the Project.

As discussed above, the Record Lot is divided into separate A&T lots, one of which is the Property. Furthermore, as discussed above, the Project will be constructed as an addition to existing improvements on the Record Lot, such that the structures constitute one building for zoning purposes.

As I have previously determined (see Oct 12, 2010 Zoning Determination letter attached as Exhibit E), Section 2116.1 of the Zoning Regulations provides that all parking spaces must be located on the same lot with the buildings or structures they are intended to serve. Furthermore, Section 199 states that a lot may be a record lot or an A&T lot. Therefore, as I have previously concluded, required parking spaces need not be located on the same A&T lot of the associated use so long as they are located on the same underlying record lot as the building they are intended to serve.

Accordingly, excess parking spaces located on the separate hotel A&T lot may be used to satisfy the parking requirement for the Project, because they are located on the same underlying Record Lot.

² At the time of construction of the new hotel in 1978, the CR Zone did not impose a parking minimum on hotels. Furthermore, the pre-existing retail uses (Lulu's, on the Property, and Blackie's, on the Record Lot) were constructed prior to 1958 and required no parking.

³ No additional parking was required for the 2006 change in retail tenants from Blackie's to Walgreens and Starbucks, since the area devoted to retail use remained the same.

VI. Loading

According to the Comp Sheet, in 1978, the uses on the Record Lot required 2 loading berths and 6 delivery spaces, which are located off Ward Place.⁴ The 1990 and 2006 additions of hotel rooms did not trigger a requirement for additional loading.⁵ Therefore the current improvements comply with the loading requirement.

The Project contains over 50 dwelling units, which triggers a requirement for additional loading under the Regulations. Specifically, the requirement is for one (1) 55-foot berth, one (1) 200 square foot platform, and one (1) 20-foot loading space. For zoning purposes, this loading may be located anywhere on the Record Lot, for the reasons discussed in Section V above.

VII. Inclusionary Zoning

Under Section 2602.1(c)(iii) of the Regulations, Inclusionary Zoning ("IZ") applies to additions containing 10 or more multifamily dwelling units that increase the gross floor area of the entire development by 50% or more. Additions that increase the GFA of the development by less than 50% are exempt from IZ. As stated in my prior Zoning determination letter dated November 18, 2010, this exemption applies to residential additions to both residential and commercial buildings.

Accordingly, so long as the Project has a gross floor area that is less than 50% of the gross floor area of the existing improvements on the Record Lot, the Project will be exempt from IZ.

VIII. Conclusion

Based on the foregoing, the existing improvements on the Record Lot comply with the parking and loading requirements of the Zoning Regulations, and the proposed Project will fully comply with the use, density, lot occupancy, court, parking and loading requirements of the Regulations. Accordingly, when you file the plans for a building permit, I will approve drawings if they are consistent with the calculations and exhibits referred to above. Please let me know if you have further questions.

Sincerely, Matthew Le Grant

Matthew Le Grant
Zoning Administrator

Attachments

File: Determination Ltr re 2109 M St to Epting 12-6-2010

⁴ Again, per the 1978 Comp Sheet, the pre-existing retail uses (Lulu's, on the Property, and Blackie's, on the Record Lot) required no loading.

⁵ No additional loading was required for the 2006 change in retail tenants from Blackies to Walgreens and Starbucks, since retail uses between 5,000 s.f. and 20,000 s.f. require the same amount of loading as a drug store of the same size, and retail uses less than 5,000 s.f. do not require any loading space.

